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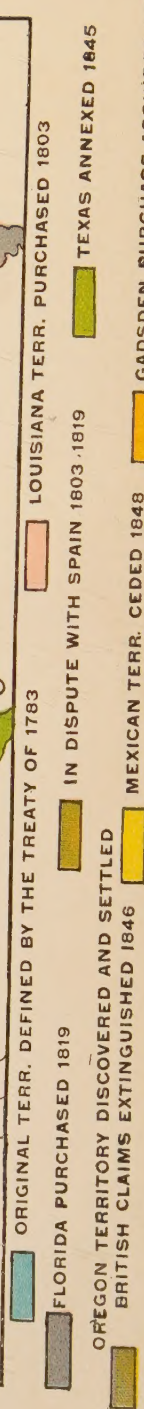






RECESSIONS OF TERRITORY FROM THE TREATY OF PEACE TO THE GADSDEN PURCHASE

ORIGINAL TERR. DEFINED BY THE TREATY

















# *The MAKING OF AMERICA*

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# AMERICAN GOOD CITIZENSHIP.

BY GROVER CLEVELAND.

[Grover Cleveland, twice president of the United States; born March 18, 1837, Caldwell, N. J.; admitted to bar, Buffalo, 1859; assistant district attorney, Erie county, N. Y., 1863-6; sheriff, Erie county, 1870-3; mayor of Buffalo, 1881-2; governor of New York, 1883-4; elected president of the United States, defeating James G. Blaine, 1884; defeated by Benjamin Harrison, 1888; resumed practice of law, 1889; re-elected president of the United States, 1892, defeating President Harrison; after second retirement as president became resident of Princeton, N. J.; author of several magazine articles on political topics, and in 1905 of *Presidential Problems*.]

There is danger that my subject is so familiar and so trite as to lack interest. This does not necessarily result from a want of appreciation of the importance of good citizenship, nor from a denial of the duty resting upon every American to be a good citizen. There is, however, abroad in our land a self-satisfied and perfunctory notion that we do all that is required of us in this direction when we make profession of our faith in the creed of good citizenship and abstain from the commission of palpably unpatriotic sins.

This belief is inevitably the parent of a sort of self-righteous contentment which leads us to expect that in some way the affairs of our country will move on quite well under the direction of those who make political activity their occupation. For ourselves we are good, quiet, respectable and inoffensive citizens, and we are not politicians.

We ought not to be badgered and annoyed by the preaching and exhortations of a restless, troublesome set of men, who continually urge upon us the duty of active and affirmative participation in public affairs. Why should we be charged with neglect of political obligations? We go to the polls on election day, when not too busy with other things, and vote the ticket our party managers have prepared for us.

Sometimes, when conditions grow to be so bad politically that a revival or stirring up becomes necessary, a goodly number of us actually devote considerable time and effort to

better the situation. Of course we cannot do this always, because we must not neglect money making and the promotion of great enterprises, which, as everybody knows, are the evidences of a nation's prosperity and influence.

A great many people and a great deal of time are necessary patriotically to care for these things, and somehow it is more pleasant to promote the country's good and at the same time our own financial prospects in this way than by habitually meddling in political operations.

It seems to me that within our citizenship there are many whose disposition and characteristics very much resemble those quite often found in the membership of our churches. In this membership there is a considerable proportion composed of those who, having made profession of their faith and joined the church, appear to think their duty done when they live honestly, attend worship regularly and contribute liberally to church support.

In complacent satisfaction and certain of their respectability, they do not care to hear sermonizing concerning the sinfulness of human nature or the wrath to come, and if haply they are sometimes roused by the truths of vital Christianity they soon relapse again to their tranquil and easy condition of listlessness.

A description of these, found in holy writ, may fitly apply to many in the state, as well as in the church:

"For if any be a hearer of the word and not a doer, he is like unto a man beholding his natural face in a glass; for he beholdeth himself and goeth his way, and straightway forgetteth what manner of man he was."

There is a habitual associate of American civic indifference and listlessness which reinforces their malign tendencies and adds tremendously to the dangers that threaten our body politic. This associate plays the roll of a smooth, insinuating confidence operator. Clothed in the garb of immutable faith in the invulnerability of our national greatness, it invites our admiring gaze to the flight of the American eagle and assures us that no tempestuous weather can ever tire his wing.

Thus many good and honest men are approached through their patriotic trust in our free institutions and immense na-

tional resources and insidiously led to a condition of mind which will not permit them to harbor the uncomfortable thought that any omission on their part can check American progress or endanger our country's continued development.

Have we not lived as a nation more than a century, and have we not exhibited growth and achievement in every direction that discredit all parallels in history? After us the deluge. Why, then, need we bestir ourselves, and why disturb ourselves with public affairs?

Those of our citizens who are deluded by these notions and who allow themselves to be brought to such a frame of mind may well be reminded of the good old lady who was wont to impressively declare that she had always noticed if she lived until the first of March she lived all the rest of the year.

It is quite likely she built a theory upon this experience which induced her with the passing of each of these fateful days to defy coughs, colds and consumption and the attacks of germs and microbes in a million forms. However this may be, we know that with no design or intention on her part there came a first day of March which passed without her earthly notice.

The withdrawal of wholesome sentiment and patriotic activity on the part of those who are indifferent to their duty or foolhardy in their optimism, opens the way for a ruthless and unrelenting enemy of our free institutions. The abandonment of our country's watch-towers by those who should be on guard, and the slumber of the sentinels who should never sleep, directly invite the stealthy approach and the pillage and the loot of the forces of selfishness and greed.

These baleful enemies of patriotic effort will lurk everywhere as long as human nature remains unregenerate, but nowhere in the world can they create such desolation as in free America, and nowhere can they so cruelly destroy man's highest and best aspirations for self-government.

It is useless for us to blink at the fact that our scheme of government is based upon a close interdependence of interest and purpose among those who make up the body of our people. Let us be honest with ourselves. If our nation was built too much upon sentiment, and if the rules of



patriotism and benignity that were followed in its construction have proved too impracticable, let us frankly admit it.

But if love of country, equal opportunity and genuine brotherhood in citizenship were worth the pains and trials that gave them birth, and if we still believe them to be worth preservation, and that they have the inherent vigor and beneficence to make our republic lasting and our people happy, let us strongly hold them in love and devotion. Then it shall be given us to plainly see that nothing is more foreign or more unfriendly to the motives that underlie our national edifice, than the selfishness and cupidity that look upon freedom and law and order only as so many agencies in aid of their designs.

Our government was made by patriotic, unselfish, sober-minded men for the control and protection of a patriotic, unselfish and sober-minded people. It is suited to such a people, but for those who are selfish, corrupt and unpatriotic it is the worst government on earth. It is so constructed that it needs, for its successful operation, the constant care and guiding hand of the people's abiding faith and love, and not only is this unremitting guidance necessary to keep our national mechanism true to its work, but the faith and love which prompt it are the best safeguards against selfish citizenship.

Give to our people something that will concentrate their common affection and solicitous care, and let that be their country's good; give them a purpose that stimulates them to unite in lofty endeavor, and let that purpose be a demonstration of the sufficiency and beneficence of our popular rule, and we shall find that in their political thoughts there will be no place for the suggestions of sordidness and pelf.

Who will say that this is now our happy condition? Is not our public life saturated with the indecent demands of selfishness? More than this, can any of us doubt the existence of still more odious and detestable evils which, with steady cankering growth, are, more directly than all others, threatening our safety and national life? I speak of the corruption of our suffrage open and notorious, of the buying and selling of political places for money, the purchase of



political favors and privileges, and the traffic in official duty for personal gain.

These things are confessedly common. Every intelligent man knows that they have grown from small beginnings until they have reached frightful proportions of malevolence; and yet respectable citizens, by the thousands and hundred of thousands, have looked on with perfect calmness, and with hypocritical cant have declared they are not politicians, or, with silly pretensions of faith in our strength and luck, have languidly claimed that the country was prosperous, equal to any emergency, and proof against all dangers.

Resulting from these conditions in a manner not difficult to trace, wholesome national sentiment is threatened with utter perversion. All sorts of misconception pervade the public thought, and jealousies, rapidly taking on the complexion of class hatred, are found in every corner of the land. A new meaning has been given to national prosperity.

With a hardihood that savors of insolence, an old pretext, which has preceded the doom of ancient experiments in popular rule, is daily and hourly dinned in our ears. We are told that the national splendor we have built upon the showy ventures of speculative wealth is a badge of our success. Unshared contentment is enjoined upon the masses of our people; and they are invited, in the bare subsistence of their scanty homes, to patriotically rejoice in their country's prosperity.

This is too unsubstantial an enjoyment of benefits to satisfy those who have been taught American equality, and thus has arisen, by a perfectly natural process, a dissatisfied insistence upon a better distribution of the results of our vaunted prosperity. We now see its worst manifestation in the apparently incorrigible dislocation of the proper relations between labor and capital. This, of itself, is sufficiently distressing, but thoughtful men are not without dread of sadder developments yet to come.

There has also grown up among our people a disregard for the restraints of law, and a disposition to evade its limitations, while querulous strictures concerning the action of our courts tend to undermine popular faith in the course of jus-

tice; and last, but by no means least, complaints of imaginary or exaggerated shortcomings in our financial policies, furnish an excuse for the flippant exploitation of all sorts of monetary nostrums.

I hasten to give assurance that I have not spoken in a spirit of gloomy pessimism. I shall be the last of all our people to believe that the saving grace of patriotism among my countrymen is dead or will always sleep. I know that its timely revival and activity means the realization of the loftiest hopes of a free nation. I have faith that the awakening is forthcoming, and on this faith I build a cheerful hope for the healing of all the wounds inflicted in slumber and neglect. As in the municipality, so in our nation, our weal or woe is made dependent upon the disinterested participation, or the neglect, of good men in public affairs.

It is time that there should be an end of self-satisfied gratification, or pretence of virtue, in the phrase, "I am not a politician," and it is time to forbid the prostitution of the word to a sinister use. Every citizen should be politician enough to bring himself within the true meaning of the term, as one who concerns himself with "the regulation or government of a nation or state, for the preservation of its safety, peace and prosperity." This is politics in its best sense, and this is good citizenship.

If good men are to interfere to make political action what it should be, they must not suppose they will come upon an open field unoccupied by an opposing force. On the ground they have neglected they will find a host of those who engage in politics for personal ends and selfish purposes, and this ground cannot be taken without a hand-to-hand conflict. The attack must be made under the banner of disinterested good citizenship, by soldiers drilled in lessons of patriotism. They must be enlisted for life and constantly on duty.

As the crusaders fought centuries ago for the recovery of the Holy Land from infidel possession, so with the same stubborn zeal must to-day's crusaders, in the cause of good government, fight to recover their Holy Land from the infidels who would degrade and defile it.

Their creed should bind together in generous co-operation all who are willing to fight to make our government what the fathers intended it to be—a depository of benefits which, in equal current and volume, should flow out to all the people.

This creed should teach the wickedness of attempting to make free opportunity the occasion for seizing especial advantages, and should warn against the danger of ruthless rapacity.

It should deprecate ostentation and extravagance in the life of our people and demand in the management of public affairs simplicity and strict economy.

It should teach toleration in all things save dishonesty.

It should uphold the interests of labor and advocate its fair treatment, but should sternly forbid its interference with those contented with their toil, and its attempts to force compliance with its demands by violent disturbances of peace and good order.

It should recognize in the wide distribution of capital and industrial enterprise the best assurance of intelligent, wholesomely interested, political conduct, and should condemn unnecessary, unnatural and speculative combinations in trade or enterprise, as teaching false business lessons and putting our consumers at their mercy.

It should insist that our finances and currency concern not alone the large traders, merchants and bankers of our land, but that they are intimately and every day related to the well-being of our people in all conditions of life; and that therefore, if any adjustments are necessary, they should be made in such a manner as shall certainly maintain the soundness of our people's earnings and the security of their savings.

It should enjoin respect for the law as the quality that cements the fabric of organized society and makes possible a government by the people.

And in every sentence and every line of this creed of good citizenship the lesson should be taught that our country is a beautiful and productive field to be cultivated by loyal Americans, who, with weapons near at hand, whether they



sow or reap, or whether they rest, will always be prepared to resist those who attempt to despoil by day or pilfer in the night.

I am by no means unmindful of the extent to which the American people are in a certain sense governed by parties, and I am quite willing to confess a strong party allegiance. I speak of something broader and loftier than party—of a higher law under whose sanction all parties should exist and by whose decrees all parties should be judged. I would have the mass of our voters so constantly impressed by this law, and so insistent upon its observance, as to force upon the managers of party organizations the necessity and expediency of its recognition.

Within the limits of this law of patriotic American good citizenship there is abundant room for intelligent party activity, but this activity must be clean and uncorrupted—sincere in its intentions, frank in the declaration of its purposes and honest in the affairs of the people.

It is as clear as noonday that if the patriotism of our people is to be aggressively vigorous, and equal to our national preservation, and if politics is to subserve a high purpose instead of degenerating to the level of a cunning game, our good men in every walk of life must arouse themselves to a consciousness that the safety and best interests of their country involve every other interest; and that by service in the field of good citizenship they not only do patriotic duty, but in a direct way save for themselves the share of benefits due them from our free institutions.

If our business men in their hard struggles for accumulation will remember these things and admit their country's weal to a share in their struggles; if our scholars and educators will not only teach patriotism, but will emerge from theoretical contemplation and give proof by their example that their lessons mean practical care for their country; and if in every way possible our people are reminded of the value of the government they hold for themselves and in trust for their children, and are stimulated to intelligent activity in its protection, we may confidently look for the conditions and results treasured up in a divine purpose, and prophesied through faith in God, at our nation's birth.

In the day when all shadows shall have passed away, and when good citizenship shall have made sure the safety, permanence and happiness of our nation, how small will appear the strifes of selfishness in our civil life, and how petty will seem the machinations of degraded politics!

There shall be set over against them in that time a reverent sense of co-operation in heaven's plans for our people's greatness, and the joyous pride of standing among those who, in the comradeship of American good citizenship, have so protected and defended our heritage of self-government that our treasures are safe in the citadel of patriotism, where neither moth nor rust doth corrupt, and where thieves do not break through nor steal.



## THE DECLARATION OF INDEPENDENCE.

BY IDA M. TARBELL.

[Ida M. Tarbell, assistant editor of McClure's Magazine; born Erie county, Pa.; educated Titusville high school and Allegheny college; associate editor Chautauquan, 1883-91; joined staff of McClure's Magazine, 1894, where her *Life of Lincoln* and her vigorous series of articles on the Standard Oil Company attracted wide attention. Author of many articles on historical and political topics and the following books: *Short Life of Napoleon Bonaparte*, *Life of Madame Roland*, *Early Life of Abraham Lincoln*, *Life of Abraham Lincoln*, *The Standard Oil Company*. The article printed here is from McClure's Magazine and is published by special arrangement.]

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The continental congress was very busy in the spring of 1776. Its daily sessions were taken up with the reading of letters from the generals of its army, accepting new companies of militia, directing battalions and gunpowder toward this or that province, disarming people who persisted in refusing to fight Great Britain, ordering cannon cast, buying saltpeter, imprisoning the suspected, voting money for rations and forage, establishing hospitals, forbidding trade with England,—in short, with the carrying on of a vigorous war against a country to which it still officially acknowledged allegiance.

This condition of affairs had existed for more than a year. Occasionally, it is true, congress had suspended hostilities long enough to protest that the colonists were not rebels, only "petitioners in arms" bent on setting right their wrongs; but the futility of its petitions and prayers had gradually worn out the patience and hope of even the most loyal of the members. When congress came together in the spring of 1776, it was pretty certain that nobody would advocate another petition. It was more likely that entire separation from the mother country was imminent. If there were many who dreaded such a step, there were others who were doing their utmost to hasten it. So strong were these latter that in May they even forced through congress a resolution calling upon the colonies to form independent governments. The temper which had carried this revolutionary measure had not sub-

sided when the news reached Philadelphia that the colonial legislature of Virginia had instructed its delegates to congress to bring in a resolution declaring the united colonies free and independent.

It was on June 7 that Richard Henry Lee, the spokesman of the Virginia delegation, arose in congress. He had been ordered, he said, by the unanimous vote of the members of the council of Virginia, to present the following resolution:

"That these united colonies are, and of right ought to be, free and independent states; that they are absolved from all allegiance to the British crown; that all political connection between them and Great Britain is, and ought to be, totally dissolved."

Two other resolutions followed, contingent upon the first, but it is not necessary to consider them here.

Lee had not taken his seat before there was a "second" to his motion. It came from John Adams, of Massachusetts. A more welcome task could not have fallen to a man than this to John Adams. A patriot by choice from the day, in 1761, when he first heard James Otis's famous speech against the writs of assistance, he had for years sacrificed business, family, health, peace of mind, to the American cause. He was one of the few who from the first believed that separation was the only outcome of the contention with Great Britain. From the time he entered the first congress of the colonies in 1774, he had boldly and incessantly advocated independence. Adams was stubborn and dictatorial, sure of the integrity of his own patriotism and doubtful of that of other people, the very nature to irritate and antagonize moderate men. Indeed no man in the colonies was more hateful to both Tories and conservative patriots. And he knew it himself. "I was avoided like a man infected with leprosy," he said, "and walked the streets of Philadelphia in solitude, borne down by the weight of care and unpopularity." But he was able, devoted, and determined, and nothing staggered him in his brilliant and persistent fight to make congress say independence. And now at last, after long months of effort and waiting, of doubt and humiliation, he had the supreme happiness of seconding a resolution offered by the leading

colony of the thirteen, which brought before congress directly the very policy for which he had sacrificed popularity and imperilled his head if Great Britain should succeed.

To see that congress felt it was playing with fire in considering Mr. Lee's resolution one has only to examine the Journal of its proceedings for June 7, 1776. So hazardous was the matter regarded for those taking the initiative, that, in recording the resolutions, neither their substance nor Mr. Lee's and Mr. Adams's names are mentioned. "Certain resolutions," says the Journal, "being moved and seconded, resolved that the consideration of them be deferred until to-morrow morning, and that the members be enjoined to attend promptly at ten o'clock in order to take the same into consideration." They debated all the next day, Saturday, and again all day Monday on the question. Who spoke and what was said are not certainly known, as the Journal has no record. John Adams, and his cousin Sam, Roger Sherman, Oliver Wolcott, R. H. Lee, George Wythe—these were undoubtedly the great speakers for separation.

The chief opponent, Mr. Adams's leading antagonist, was John Dickinson of Pennsylvania. Dickinson at this time was a man forty-four years of age, three years older than Adams, a gentleman who had had as good an education as the colonies afforded, and who had followed it by a term in the Temple, London. While sufficiently a man of the world to appreciate all points of view, Dickinson's tastes led him to a quiet and scholarly life. He had always been happiest on his farm in Maryland, where, as he said, his library was the most valuable part of his small estate.

From the beginning of the trouble with England he had opposed her on the ground that her acts were contrary to English law. While the patriots of New England, like Adams, were talking of the divine right of revolution, Mr. Dickinson was telling his fellow-colonists that there were purely legal and constitutional reasons for resisting Great Britain. He became a leader in the opposition to the Stamp Act, and his "Farmer's Letters," published in 1768, were probably the most influential contributions to the colonists' cause up to the time of Tom Paine's "Common Sense." But the argu-



ments of these letters were legal ones; such, too, were the arguments in the famous petition to the king which Dickinson wrote in 1771. Non-importation, non-exportation, and armed resistance he defended on the same grounds. The colonists were not rebels, he argued, but "petitioners in arms." Naturally Dickinson disapproved of the Boston Tea Party, and could not be persuaded to join the Massachusetts patriots in their violent resistance. In the spring of 1776, although he had not hesitated to vote war supplies or even to command a Pennsylvania regiment, all the force of his intellect was given to opposing the radicals in congress, and in struggling against any measure so irrevocable as a declaration of independence.

It was Dickinson, then, who, when the debate began on Lee's motion, was first on his feet. His most practical arguments were that such a declaration was premature, that the colonies should wait at least until they had perfected their military arrangements and secured, if possible, the aid of France, with which country they were then negotiating. The names of all who followed Dickinson we do not know, but among them were able and loyal men—John Jay, James Wilson, James Duane, Robert R. Livingstone, Edward Rutledge—but it was evident from the beginning of the debate that they were in the minority. The delegates of seven colonies—four in New England, three in the South—were either instructed to vote for independence or leaned towards it; those of six colonies—New York, New Jersey, Pennsylvania, Maryland, Delaware, and South Carolina—were opposed to the resolution. In such a matter unanimity was of the utmost importance, and after a three days' debate it was decided to postpone a final vote until the first day of July, and in order that no time be lost a committee was appointed to prepare a declaration suitable to lay before the world, stating the grievances which drove them to separate from Great Britain.

This committee was appointed by ballot on June 11, and consisted, according to the Journal, of the following gentlemen: "Mr. Jefferson, Mr. J. Adams, Mr. Franklin, Mr. Sherman, and Mr. R. R. Livingstone."

Naturally, one would expect to find at the head of this committee Mr. Lee, who had presented the resolution. That he was not given the place seems to be due to one of those nice little matters of state politics, which had quite as much influence with the "Fathers" as they have to-day. Mr. Richard Henry Lee was not beloved by his colleagues from Virginia, and Mr. Jefferson was sent up to rival and supplant him: so says John Adams. Unquestionably state politics had something to do with the choice of Jefferson, though, as a matter of fact, Lee would have been prevented from serving even if he had been appointed, because of the illness of his wife, which called him away from Philadelphia just about this time.

Jefferson was a comparatively new man in congress. He was only thirty-three years of age at the time, and had been a member less than a year. Even in this time he had not been at all prominent in the debates of congress. John Adams said that, during the whole time he sat with him in congress, he never heard him utter three sentences together. But if silent in debate, Jefferson had shown himself "prompt, frank, explicit, and decisive upon committees and in conversation," and was looked upon by all of the older members, searching for young talent, as one of the most promising young men Virginia had sent up. Particularly was he well regarded for his abilities as a writer. His public documents had become famous throughout the colonies, and one of them had circulated extensively in Great Britain. As the talent needed in the new committee was, after a comprehension of the ground to be covered by the declaration, literary talent, it is evident that Jefferson was a promising selection.

On the first meeting of the committee there seems to have been a little discussion about who really should do the writing. Adams says he and Jefferson were selected by the committee, but that he insisted that Jefferson himself do it. Jefferson denies this, and says that the committee pressed him alone to undertake the draft. This slight discrepancy in the memory of the two honorable gentlemen is of no importance; it was Mr. Jefferson who wrote the Declaration.

He was living, at the time the task was given him, in a house rather on the outskirts of Philadelphia, chosen purposely because the neighborhood was quiet. Here he had rented a second floor, and was accustomed to work whenever congress was not in session. On coming up to Philadelphia on this trip one of his first tasks had been to go to a carpenter and give him a plan of a desk he wanted made—a most characteristic thing for him to do; for Jefferson was a man who insisted on planning everything which he was to use, whether a private house, a public building in Washington, his furniture, or his own tomb. The desk was fourteen inches long by ten in breadth and three in height, and it was on this that through the long June days he labored on the Declaration.

It must be conceded by one who reads the contemporary literature of the revolution, that the gist of the document which he produced was in everybody's mouth. The words, declaration of independence, had been heard for a long time on all sides. Nothing was more firmly embedded in the hearts of the people than their right to "life, liberty, and the pursuit of happiness," nothing stronger than their conviction that governments exist to insure these rights, and that they "derive their just powers from the consent of the governed." The whole long list of grievances which Jefferson enumerates, and which make up the body of the document, had been reported again and again from different parts of the country. What Jefferson did was to voice, in the favorite English style of the day, the spirit of independence abroad, and to state formally the different grievances of the thirteen colonies as a justification of revolution. It was a great document because it expressed more completely than had yet been done a universal conviction, and because of the genius for selection which it showed. In no sense was it an invention. Years afterwards, when its fame had grown, critics of Jefferson began to sneer at the Declaration of Independence as not original, and point out that this phrase and that, this complaint and that, had been uttered here or there. This controversy was hottest in 1819, when the Mecklenburg Declaration, said to have been passed by Mecklenburg county, North Carolina, in May, 1775, was discovered.



When this came out Adams was much excited, and wrote to Jefferson:

“How is it possible that this paper should have been concealed from me to this day? Had it been communicated to me in the time of it, I know, if you do not know, that it would have been printed in every Whig newspaper upon the continent. You know that if I had possessed it, I would have made the hall of congress echo and re-echo with it fifteen months before your Declaration of Independence. What a poor, ignorant, malicious, short-sighted, crapulous mass is Tom Paine’s ‘Common Sense’ in comparison with this paper. Had I known it, I would have commented upon it from the day you entered congress till the Fourth of July, 1776. The genuine sense of America at that moment was never so well expressed before or since.”

Jefferson at once declared to Adams that he believed the document spurious, and brought forth a long array of reasons to support his belief. The matter became a subject of partisan controversy. The legislature of North Carolina took it up, and, in 1831, published a pamphlet to prove that a declaration of independence was made in Mecklenburg county more than a year before Jefferson wrote his. The controversy went on, until finally, by diligent research in old newspapers both in London and in this country, it was established beyond a doubt that such a document had been written and published about the time specified. It is probable that Jefferson never saw it, or if he did, it is certain that he had forgotten it. One has only to remember his own experience in the flood of resolutions which come from all sides in periods of excitement over some great public question, to know how few of them, which voice a general sentiment, make a deep enough impression to be remembered in detail. All of this criticism that the Declaration is not “original” is most unintelligent. The great merit of the document is that it never attempted originality, but simply arranged in order the grievances of the thirteen colonies and stated clearly the theory on which the right to resent these grievances was based.

So well did Jefferson do his work that when he submitted it to Adams and Franklin, before handing it over to the com-

mittee, they made only a few corrections. Jefferson then wrote out what he calls a "fair copy," and turned it over to the committee of five. They found it so good that they changed not a word of it, and on the 28th of June the document was laid before congress.

While Jefferson in his little room at the corner of Market and Seventh street was laboring over the Declaration, the country from one end to the other was busy discussing the subject. In the states where the sentiment for independence was strong—that is, in New England and the South—the exultation was great, and the colonial congresses, sons of liberty, committees and town meetings worked with renewed energy, the excitement penetrating to the most remote settlements. Heavy pressure was brought on the colonies which, up to this time, had been against separation, by the discussions in newspapers and pamphlets, and by the debates in assemblies, conventions, committees of safety and of inspection, and in town and county meetings. The whole people soon became familiar with the question, and their councils began to feel the effect of the popular agitation. Not only were the councils at home besieged by the advocates of independence—letters, resolutions, and petitions were showered on the delegates in congress. The delegates of Pennsylvania had been strictly ordered to reject any proposition for independence, but the radical party of the colony had before this taken matters into its own hands, and by an interesting revolution, quite worthy of the French patriots of 1792, they succeeded in overpowering the regular assembly, and forwarded a message to congress favoring independence. New Jersey, too, sent new delegates instructed for the resolution if they "thought it necessary or expedient." On June 17, William Whipple wrote back to New Hampshire that there had been a great change in the sentiment of congress since his arrival, and on June 25, Elbridge Gerry wrote to his friend James Warren, in Boston, that it appeared to him there was not even a doubt of any colony in the country, excepting New York and Maryland.

As the first day of July approached, the excitement in congress increased. Although we have no records of the

debate, it is evident that in the intervals between reading reports from the army and voting money for gunpowder and cannon, the two parties were exercising their utmost influence for and against the Declaration. The numbers for independence were gradually creeping up, and every change of front became a matter of the most dramatic interest.

John Adams, in a letter to a friend, written in 1813, tells a graphic story of the conversion of one of the members. "For many days the majority depended on Mr. Hewes of North Carolina. While a member, one day, was speaking, and reading documents from all the colonies, to prove that the public opinion, the general sense of all, was in favor of the measure, when he came to North Carolina, and produced letters and public proceedings which demonstrated that the majority of that colony were in favor of it, Mr. Hewes, who had hitherto constantly voted against it, started suddenly upright, and lifting up both hands to Heaven, as if he had been in a trance, cried out, 'It is done! and I will abide by it.' I would give more for a perfect painting of the terror and horror upon the faces of the old majority at that critical moment than for the best piece of Raphael."

The resolution was brought to vote on the first day of July, some fifty-one members being present in congress. That it would have a majority was certain, but something more than a majority was necessary, everybody felt. On the morning of the 1st, just as congress was about to enter on the debate, the hearts of John Adams and his associates were made glad by the arrival of delegates from Maryland, instructed to give a unanimous vote. Matters looked so propitious that Adams wanted the vote taken at once, but New Jersey was unwilling. She had given her delegates permission to support independence if they thought it expedient; they had arrived only on the 28th, and very naturally they wanted to hear the arguments; so, to Adams's disgust, the debate began again. "It was an idle mispence of time," he grumbled, "for nothing was said but what had been repeated and hackneyed in the room a hundred times for six months past." But stale and futile as the reiteration seemed to him, he did not shirk it. Never was Adams more powerful than in



this final debate on Lee's resolution. He was the "colossus of that debate," said Jefferson afterwards. The entire day of July 1 was spent on the question, and at night congress was still unwilling to take a final vote, and so adjourned the decision until the 2d. The night was spent in excited work. Four colonies—New York, Pennsylvania, Delaware, and South Carolina—still held back, but before congress assembled the next morning a majority for the resolution had been secured in each delegation excepting that of New York, so that when the vote was finally taken, twelve colonies were ready to declare that "these united colonies are and of a right ought to be free and independent."

As a matter of fact, the passing of Mr. Lee's resolution effected the separation of the colonies from Great Britain, and the 2d of July is really Independence Day. It was this day, John Adams wrote his wife on July 3, that future generations would celebrate. "The second day of July, 1776, will be the most memorable epocha in the history of America," he wrote. "I am apt to believe that it will be celebrated by succeeding generations as the great anniversary festival. It ought to be commemorated as the day of deliverance, by solemn acts of devotion to God Almighty. It ought to be solemnized with pomp and parade, with shows, games, sports, guns, bells, bonfires, and illuminations, from one end of this continent to the other, from this time forward for evermore."

But it was on July 4 that the document which makes the formal expression of independence was adopted. That formal Declaration came before the house immediately after the adoption of Lee's resolution, and was taken up, clause by clause, for debate. The members, after their two days' struggle, were not in any mood to deal easily with Mr. Jefferson's production. On the contrary, they set themselves vigorously to pull it to pieces.

With two exceptions the changes they made were verbal, and to the great improvement of the document. The two really important points which congress refused to allow to go into Mr. Jefferson's paper were, first, a paragraph in which he arraigned with terrible severity the slave traffic; and sec-

ond, a charge that the English people had been equally guilty towards America with the king and parliament.

The free criticism of the Declaration indulged in during the debate annoyed Mr. Jefferson exceedingly. He made it a point of courtesy to reply to none of it, but it was easy to see that he took it badly. Dr. Franklin was by his side, and observing his nervousness tried to ease the situation by telling him a story.

"I have made it a rule," said Franklin, "whenever in my power, to avoid becoming the draftsman of papers to be reviewed by a public body. I took my lesson from an incident which I will relate to you. When I was a journeyman printer, one of my companions, an apprentice hatter, having served out his term, was about to open shop for himself. His first concern was to have a handsome sign-board, with a proper inscription. He composed it in these words, 'John Thompson, Hatter, makes and sells hats for ready money,' with a figure of a hat subjoined; but he thought he would submit it to his friends for their amendments. The first he showed it to thought the word 'Hatter' tautologous, because followed by the words 'makes hats,' which showed he was a hatter. It was struck out. The next observed that the word 'makes' might as well be omitted, because his customers would not care who made the hats. If good and to their mind, they would buy, by whomever made. He struck it out. A third said he thought the words 'for ready money' were useless, as it was not the custom of the place to sell on credit. Every one who purchased expected to pay. They were parted with, and the inscription now stood, 'John Thompson sells hats.' 'Sells hats!' says the next friend; 'why, nobody will expect you to give them away; what then is the use of that word?' It was stricken out, and 'hats' followed it, the rather as there was one painted on the board. So the inscription was reduced ultimately to 'John Thompson,' with the figure of a hat subjoined."

Franklin's story did not restore Jefferson's equanimity. In the week following the debate he made at least five drafts of the document as he wrote it, and marking carefully the changes and omissions of congress, sent them to friends.



One of these he sent to Richard Henry Lee. "You will judge whether it is better or worse for the critics," he wrote Lee.

Even time did not quite cure Jefferson of his resentment, and when he came to write his memoirs he said rather sarcastically, in explanation of the two major omissions: "The pusillanimous idea that we had friends in England worth keeping terms with still haunted the minds of many. For this reason, those passages which conveyed censures on the people of England were struck out, lest they should give offense. The clause, too, reprobating the enslaving inhabitants of Africa, was struck out in complaisance to South Carolina and Georgia, who had never attempted to restrain the importation of slaves, and who, on the contrary, still wished to continue it. Our Northern brethren also, I believe, felt a little tender under those censures; for though their people had very few slaves themselves, yet they had been pretty considerable carriers of them to others."

Just how long the debate on the Declaration continued on the fourth is unknown. While it was going on the Radicals were marshaling all their strength to secure a big vote; McKean of Delaware even sent an express at his own expense to Dover for Cæsar Rodney. "I met him at the state house door in his boots," wrote McKean afterwards. "He resided eighty miles from the city, and arrived just as congress met."

It was probably late in the afternoon when, according to the Journal, the vote was taken and the Declaration was "agreed to." Forty out of fifty members present are supposed to have voted for it, including one member from New York—Henry Wisner. The document was then ordered "authenticated and printed." It is improbable that there was any signing on that day, excepting that by John Hancock, the president, and Charles Thompson, the secretary. Their names were put to the copy which Mr. Jefferson had presented, but no others, as indeed would have been unwise. It was most important that the document have a unanimous approval, if possible. By a little waiting and manœuvring it seemed pretty certain to the wiser members of congress that this unanimity could be secured.

Not only was there no general signing of the Declaration of Independence on the 4th of July, 1776, but tradition has invested the day with other dramatic features which unhappily are false. It is a pity not to believe, as most of us were taught, that while the debate was under way—

There was tumult in the city,  
In the quaint old Quaker town;

—a pity not to be able to tell the story of the gray-haired bell ringer, sitting with one hand ready on the clapper of his bell, until he hears a young voice crying, "Ring, grandpa, ring, oh ring for liberty!" As a matter of fact the meetings of congress were held behind closed doors, and while it was well known in the coffee houses of the city that Mr. Lee's resolution had been voted on favorably, and, no doubt, too, that a formal declaration embodying it was under consideration, no crowds surrounded Independence Hall that day; there was no small boy—no sounding of the liberty bell.

Indeed, it was not until July 6th that the Declaration appeared in the Pennsylvania Packet. On the 8th it was read in the state house yard. The patriots turned out in a great crowd, and the reader, John Nixon, was cheered to the echo. After the ceremony the crowd turned its attention to the king's coat-of-arms, which was suspended over the doorway in the court room of the state house, tearing it down and taking it out and burning it. In many places the reading of the Declaration, which had been ordered by congress, was attended by similar acts of destruction. Thus, in New York, the Sons of Freedom tore down an equestrian statue of George III., which stood on Bowling Green, and turned the monument over to the authorities with the order to run the lead into bullets. In Baltimore "the effigy of 'Our Late King' was carted through the town, and committed to the flames amidst the acclamation of hundreds," the records say. In Savannah, in August, at the reading, there was a great procession, almost the whole town turning out to inter an effigy of his Majesty, King George III. A burial service was prepared for the occasion, a portion of which ran: "Corruption to corruption, tyranny to the grave, a

repose to eternal infamy in sure and certain hope that he will never obtain a resurrection to rule again over these United States of America."

As a whole, the demonstrations were not noisy or destructive. The army, which might have been expected to indulge in some vindictive performances, received the news quietly, and in many cases the people seemed to feel deeply the solemnity of the step which congress had taken, and to have rightly concluded that prayers were more appropriate to the occasion than the tearing down of statues. The only colony which had refused to vote for Lee's resolution on the 2d was New York. No sooner had the vote been taken than the delegates from that state sent a letter post haste, asking what was to be their line of action thereafter. On July 9 the provincial congress of New York, which was in session at White Plains, replied that "the reasons assigned by the continental congress for declaring the united colonies free and independent states are cogent and conclusive; and that while we lament the cruel necessity which had rendered that measure unavoidable, we approve the same, and will, at the risk of our lives and fortunes, join with the other colonies in supporting it." Congress was now unanimous on independence.

On August 2, a committee appointed on July 19, to prepare an engrossed copy of the Declaration for signing, laid it before congress. Many of the men who had fought over it on the 4th of July were still present, but in the meantime many new delegates had come to Philadelphia, so that there were a number present who had had nothing to do with the original act of adoption. Just what happened at the signing we do not know, any more than we know the details of the debate in the critical days when it was under consideration. One thing is certain, however—serious as this matter of signing really was, nobody hesitated. "Give me liberty or give me death!" was no mere phrase for these men. They had weighed its grim meaning and deliberately accepted the alternative. They even took up with jests the matter of putting their names to a document which, if the colonies were defeated, would surely send them all to



the gallows. "There, John Bull may read my name without spectacles," said John Hancock, as he made the big flourish with which we are so familiar from facsimiles of the Declaration. "We must be unanimous," he said again, "there must be no pulling different ways; we must all hang together." And Franklin replied, "We must indeed all hang together, or most assuredly we shall all hang separately." "There go a few millions," said one of the members, as John Carroll, of Carrollton, then the richest man of the colonies, put his name to the Declaration.

The great charter of freedom was now complete, and while its makers were struggling to prove that it was something more than rhetoric, the document itself followed the dangerous wanderings of the continental congress. In 1789, when that body made way for the first federal congress, the Declaration was confided to the state department of the new government. It had a companion now, the constitution of the United States—a noble proof that the sentiment of independence which had brought it into existence, far from being a barren enthusiasm, capable only of eloquent declamation, was a vital force which could raise armies, win battles, starve and freeze and still have life and courage to devise and put into operation a great government.

As the years went on, the veneration of the people for the Declaration of Independence grew. The demand to see the document, to read its text, and examine its signatures, steadily increased with this feeling of reverence. The government naturally sought to satisfy this desire, but unhappily, in doing so, it allowed great harm to come to the original. Early in the century the ink was faded, and the parchment injured in securing a facsimile for making a copper plate. Still further injury was done when it was placed on exhibition in a strong light in 1849. It remained thus exposed until some of the signatures had entirely vanished. Finally, in 1894, the state department realized that in careless good nature it was allowing the great charter to fade away. Steps were at once taken to preserve it. It was carefully covered and placed in a drawer in a steel case specially prepared for its reception, and a facsimile hung in the place it once occu-

pied. At the same time steps were taken to preserve the original copper plate by having electrotype copies made, so that the original might be put into a fireproof safe. The document itself is thus finally protected. The great truths for which it stands are not so easily preserved. The eternal watchfulness of those who love liberty for its own sake is all that will secure the spirit of the Declaration of Independence. The exercise of this vigilance is the supreme and enduring concern of the nation.



# THE OUTCOME OF THE DECLARATION OF INDEPENDENCE.

BY HAYNE DAVIS.

[Hayne Davis, authority on international law; born Nov. 2, 1868, at Statesville, N. C.; educated at University of North Carolina; began practice of law after graduation and took an active part in politics, becoming secretary of the Democratic state executive committee of North Carolina; removed to New York, and in addition to his practice of his profession has written many articles on international law and the union of nations, among them this for the Independent.

Mr. James Bryce has said that American institutions disclose the type toward which all the rest of civilized mankind are forced to move, some with swifter, some with slower, but all with unresting feet. This is no mere fancy, but a fact. Witness the birth in America alone of something over a hundred states like those which compose our Union since the Declaration of Independence. There was not one such State in existence before that Declaration was made, and their birth rate since in America alone has been nearly one a year. They have grouped themselves into nineteen absolute sovereignties, maintaining diplomatic relations with the nations of the world; and all that have territory enough to justify it have taken the same federal form as the United States. Both Canada and Australia, though still within the shadowy boundary of the British empire, are really nations formed in the likeness of the United States.

The forces which have done these things in other parts of the world are at work on the continent of Europe. Already they have formed there, out of petty kingdoms that were at war inter sese for centuries, the German empire and the United Kingdom of Italy, structurally in the likeness of the United States. Already, too, some of the offices of these governments have been won for the American principle—namely, periodical choice by cotemporaries instead of hereditary selection of officers of government.

In all Europe war is being waged between the home rule form and the elective principle of government on the one side and imperialism and the hereditary right to rule on the other, and the victory is continually for the America idea. In this Americanization of the world America's part is simply to let her light so shine, by wise conduct of her own home affairs, that other nations may see her good works and adopt the political principle which has been her source of power.

But the fashioning of various parts of the world into the likeness of the United States is only a part of the political world work of the future. During the past century men have discovered, and applied to business affairs, scientific truths which will make the world's nations nearer neighbors to each other than any of the states now constituting these unions were when their unification began. All the forces which operated to unite the American states during the past century are operating now to unite nations in the same form. Not only this, but new and powerful forces have been added, and the whole system of forces has been intensified by the electric flash, annihilating time and distance, making men's interests as wide as the world and their communications as quick as lightning. If union of contiguous states could not be resisted under nineteenth century conditions, how can union of nations be resisted under these conditions?

The startling fact is, however, that the United Nations has already come into being through the Hague conference.

Before the Hague conference convened international affairs were in chaos. That conference turned chaos into something better than confusion, though hardly worthy to be called order. The highest ideal which could win the unanimous approval of the conference was an International court to which every nation might appoint four members and which should always be open for the trial of any international question voluntarily submitted to it, but should have no power to summon any nation to come before it in any matter whatsoever.

As twenty-six nations have ratified the Treaty of The Hague, providing for such a court, and have appointed mem-

bers to it, the judicial department of the United Nations has been duly organized and in good form. Even though this court of the United Nations is without suitable authority, its very existence constitutes the United Nations a living organism. It is feeble, but it is alive. Its life is endangered to be sure by the passions of men and races, but the forces which gave it existence will preserve and strengthen it, and it will live as long as human government endures, because it is organized in the republican form (home rule) and operated on the democratic principle (periodical choice of officers by their cotemporaries).

The United Nations seems now to have only a judicial department, but every living political organism has three departments—legislative, judicial and executive. It is easier to see them when divided and put into the hands of three separate persons or three distinct bodies than when they are concentrated in one person or scattered among many. In the United Nations as now constituted there are legislative bodies—lawmaking authorities of each constituent nation. No idea can become a binding law for this union until it receives the express or implied approval of every one of these bodies. There are judiciaries in the United Nations whose jurisdictions conflict. First, the Hague court, which can judge in such causes only as are voluntarily submitted to it by both disputants and whose judgment may be disregarded by break of faith; and the executive and legislative departments of the constituent nations, the right to judge its own cause having been reserved to every nation when the union was formed. And in judging its own cause a nation acts necessarily through its legislative or executive, not through its judiciary, though judgment properly belongs to the latter.

Whether a particular controversy be judged by the nations involved or by the Hague court, the enforcement of the judgment is in the hands of the executive and legislative departments of the constituent nations. So that there are executive authorities in the United Nations.

This is a chaotic system to which the interests common to all men are intrusted, and yet it is a system. It is not

hopeless confusion, but struggling order. Existing nations have come out of a similar condition—England out of almost this identical one. And America has handed over to the twentieth century two documents which contain all the words necessary for preserving the life and perfecting the form of this political child of our century—the Articles of confederation and the constitution of the United States.

It would seem as if the destiny of this government of the future is to grow into the grace, first, of the Articles of confederation, and then of the constitution of the United States.

The United Nations now have one grace not possessed by the United States under the Articles of confederation (1776–1789) or under the constitution of the United States as originally adopted.

First, it is provided in the constitution of the United Nations—the Treaty of The Hague—that any nation may secede at will from the union thus created by giving one year's notice of its intention. The absence of a clause on this subject caused the Civil war and almost wrecked the American Union.

Second, the Articles of confederation required the submission of all disputes between states to the judgment of Arbitrators of the United States, and created a deliberative body having Representatives from and chosen by each state, and empowered to legislate on certain matters agreed to be of common concern to all the states.

When the International parliament corresponding to this continental congress of the American confederation comes into existence, shall it be empowered to enact laws for the United Nations on specified subjects? If so, should this be by unanimous vote, or three-fourths vote, or two-thirds vote, plus one (which was the provision in the American confederation)? Or should this body merely originate amendments to the law of nations, its resolutions to become binding when ratified by a specified number of nations, or when not vetoed by a specified number?

What international questions ought now to be put into the list of cases triable only by the court of the United



Nations? Would it be wise for nations to enter into an agreement to submit all controversies to arbitration in the first instance, with the right reserved of appealing to arms after the decision of the court if the people cannot abide the decision? These questions present the paramount political problem of the immediate future.

As the American people could rest only one decade under the Articles of confederation, it is reasonable to suppose that the people of the world, after having realized what seems to be its grace, will soon grow out of its deformity into the symmetry of the United States as now constituted.

There are difficulties in perfecting a world-wide organism not encountered in the creation of the United States, which covers only a part of the continent, though including in its citizenship men of every race. The differences of condition must express themselves in the constitution of the World Union; for instance, the United States is forbidden to interfere in domestic difficulties within a state unless called on by the legislature of that state, and is bound to help if called on and to preserve forever the republican form of government in each state. This was a proper provision in forming the United States, for all the states had reached the final form of government—Republics. In the United Nations some members are republics, some quasi-republics, some quasi-monarchies and some absolute monarchies. Republics can unite with such governments for affairs common to all, if a government for these affairs can be agreed upon which is acceptable to all the nations concerned; for the basis of an international union must be home rule, which entitles the people of every nation to have such government for their home affairs as seems to them most likely to affect their safety and happiness. Hence the United Nations will have to guarantee to the people of each nation the right to grow out of its present deformity into more perfect political symmetry when and as its people prefer, binding itself not to interfere under any circumstances in the domestic difficulties of any constituent nation.

It might be well to leave each nation free to levy a tariff on imports, for there is no tariff policy always best at all

times for all nations. And if there were, it would not be possible for all nations simultaneously to discover this fact. If the parliament of nations should enact a uniform tariff law for practically the whole world, it would surely postpone the day of its coming into being, and might cause some nations eventually to secede. Ultimately, international trade and intercourse would be as free as interstate commerce now is. But this had better come by independent action of the various national legislatures, just as the freedom of speech, of conscience and of the press throughout our Union has come by the separate action of forty-five state legislatures, not by concerted action of their representatives in the federal congress.

With these exceptions few material changes need be made in the American constitution to turn it into a World constitution. The grant of positive power to the larger organism should be an exact counterpart of the grant of power from the states to the United States. All political power was reserved to the states, or to the people, except power to control commerce between the states and with foreign nations. These two, and only these two, powers were granted to our Union because all other political matters were considered as local to the states. Just so the United states should reserve control of commerce between its own states and grant to the United Nations authority to control international commerce, this being the one political matter of common concern to all nations.

Not only the positive grant of power to the United States but the essential limitations on its authority are proper in the constitution of the United Nations—i.e., the United Nations should be forbidden (1) to establish a religion, (2) or to require any religious test for holding office, (3) or to abridge the freedom of conscience, or of speech, or of the press, (4) or to interfere in the domestic disturbances within any nation, etc.

Each nation should have a voice in the United Nations—an equal voice in the senate, a voice in the house proportionate to population (or, say, international trade) and a

blending of these two in the choice of the chief executive, if it be found that a chief executive be needed.

As to suffrage and holding office under the United Nations, a person entitled to express his opinion in the conduct of his state and nation would hear his voice re-echo in the councils of the United Nations; and any one eligible to office in his own nation would be eligible to office in the United Nations.

When the United Nations assumes the form of the United States this will give to every man a trinity of political authorities.

First, most important and forever most dear to the heart of man, his own immediate state or political neighborhood, which, by becoming a part of the United Nations, would become supreme forever in its own affairs at home.

Second, his nation, guaranteed in its perpetual control of commerce between the states which compose it and in the right of its people to organize it, or reorganize it, in such form as they may prefer.

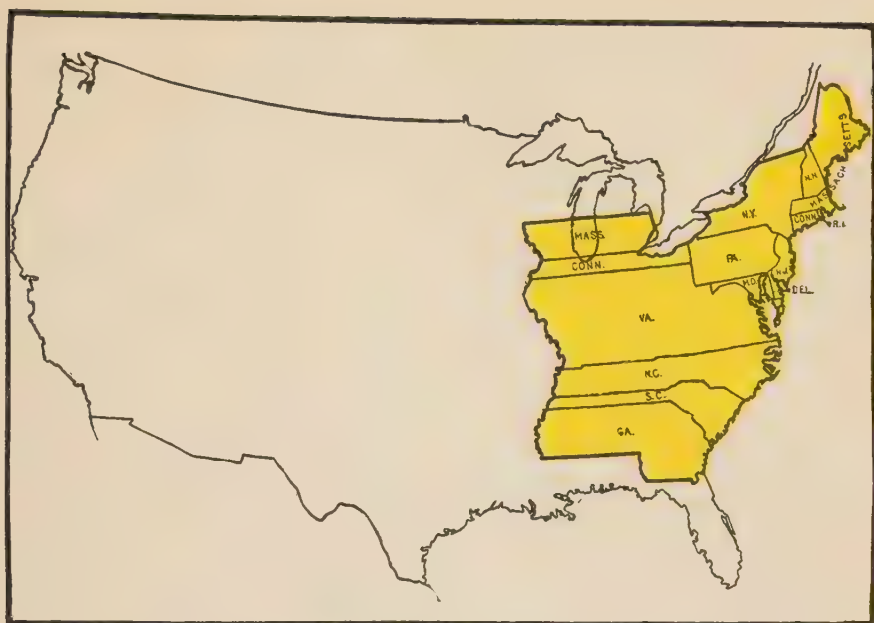
Last, the United Nations, greatest in area and yet least important, but nevertheless absolutely essential to secure to any man those blessings for which his state and nation have been organized by such expenditure of blood and treasure.

After the perfection of this union the authority of the legislature of New York, Saxony or any other state within a nation would be exactly the same as now. The congress of the United States, or the parliament of any other constituent nation, would have every perfect power it now has, for nothing would have been taken away except the right to say in international affairs. And as the legislature of every nation now has an equal right to say in such affairs and therefore contradict what any of the others say, and by so doing cause war, it is plain that no nation has a perfect or desirable voice in the interests common to all nations. Consequently the people of every nation would have a more perfect as well as a juster voice in their widest interests if they expressed themselves in an international parliament

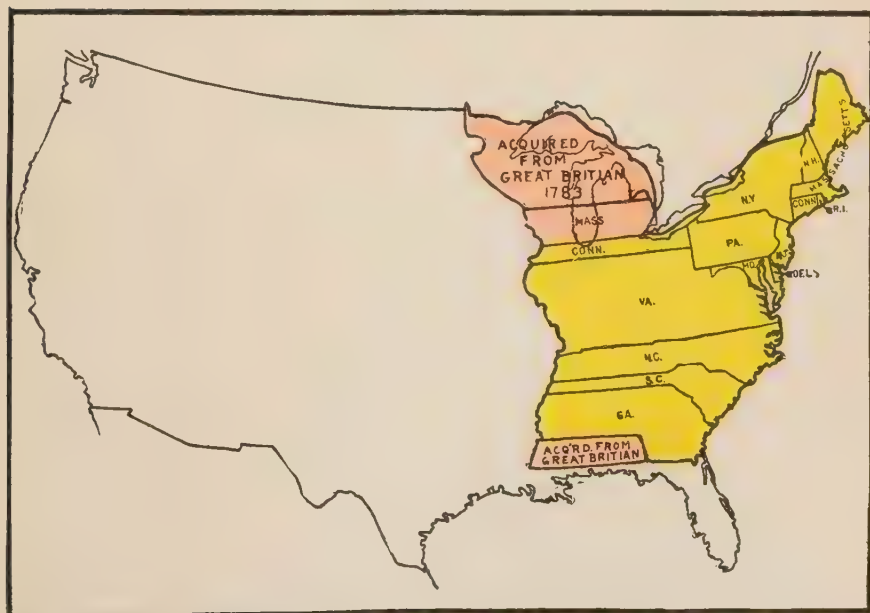








NO. 1.—1776. AREA OF THE THIRTEEN COLONIES AT DATE OF REVOLUTION.



NO. 2.—1783. SHOWING ADDITION BY PEACE TREATY OF 1783 ON THE NORTHWEST AND SOUTHWEST.



instead of through their own national legislature or executive. 330.973 L165m

Passing from consideration of its form to the reason for perfecting and perpetuating it, this union would substitute safety for danger at home, profit for loss everywhere. It would turn the present terminable privilege of trading throughout the world at a present loss in money and an almost sure calamity of war in the near future into an abiding right of profitable intercourse between all nations, and the present universal danger of destruction into security for the enjoyment of the fruits of labor wherever harvested.

Everybody's interests would be conserved, no man's interest jeopardized, and the gravest menace to the peace of the nations dissipated. Extermination of nations, massacre of men in war, devastation of lands and of the treasures of ages, and all the horrors which inevitably accompany these things, would be at an end.

But mere agreements to arbitrate international differences cannot bring war to an end. The American people made such an agreement when forming the confederation; then they went further and formed the Union, and yet war between the states came. American history teaches that organization on the home rule basis, clearly defining the rights of the several political organisms, and scrupulous respect for the rights of the smaller by the larger bodies, are all essential to the preservation of the peace and welfare of the most intimate sovereignties. Lincoln truly said: "Nothing is settled till it is settled right." And as man, no matter what his color, or convictions, or habits of life, is entitled to home rule—a due voice in all that concerns him—revolutions within governments and wars between nations must continue until the world settles down to peace and plenty under a universal republic which shall secure to all men their inalienable right of local self-government.

It was Victor Hugo who exclaimed:

"The Republic is the Future." 2629

The republic is the political device for effectuating the right of all to have a due voice in everything that concerns



them—the present liberated from the past, the here from the yonder—such a government is the republic and such a republic, covering the whole world, is the future.

The greatest obstacle to the immediate perfection of this union is not in the nature of things, but in the prevailing misjudgment of each other by individuals and races. To Jews other races seem still too much like Gentiles—unworthy of the promises. To those having the spirit of the Greeks, others still appear to be barbarians; to royalists, the mass of mankind seem unworthy of taking a part in the higher things; to those who pride themselves on nobility, the rest of humanity seems ignoble. But to the man who has risen really high, other men appear as they really are—capable of sharing in his noblest thoughts and aspirations, which are indeed already smoldering in them and ready to be fired by the vital word when truly spoken.

Finally, to regard the formation of this United Nations as a fancy is to ignore the fact that it has already been formed. To look upon its final perfection in the likeness of the United States as visionary is to ignore the essential political history of the nineteenth century.

# THE BEGINNINGS OF REPRESENTATIVE GOVERNMENT.

BY EDMUND J. JAMES.

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The proper basis of apportioning or dividing representation in political assemblies among the various units entitled to membership in such bodies has become one of the most difficult questions in the working of representative government. Whether population, or wealth, or social position, or profession should be accepted as the fundamental principle, or some basis combining one or more of these, is still a mooted question in every civilized country.

The tendency of late, indeed, has been toward recognizing the principle of population as the most important and fundamental one. Of the large nations, however, only France and the United States have as yet gone very far toward the actual realization of such a principle; while the United States, though the first to recognize the principle in the construction of its national government, is still very far from carrying it to its legitimate consequence.

So long as representative assemblies were simply a means of controlling the government, and confined their functions largely to granting or refusing taxes, or vetoing or approving laws or codes previously prepared by the government, as was so long the case in England, it made little difference how they were constituted. So long as the controlling classes of society are sufficiently represented by typical

members, to make sure that the general sense of the nation is expressed; so long as the political consciousness of the great mass of the people is still in an undeveloped state, so that the majority of the population is willing that the minority should make their laws and administer the government: the question of assigning representatives, though not always a simple, is scarcely ever a dangerous, question.

As soon, however, as legislatures themselves begin to act independently of the government in framing laws and in determining policies; as soon as they begin to control and, certainly when they begin to make and unmake, the governments themselves, then it becomes a matter of high importance that every class of the community shall be fairly represented; since in the struggle of interests in such bodies, unrepresented classes are likely to be placed at a disadvantage. It is no mere accident that the political consciousness of the people should have been gradually aroused, as in England, as a result of this very struggle for representation in an assembly which had come to be the chief instrument for lawmaking and law-unmaking. Indeed, this very struggle itself had, perhaps, more to do with turning the attention of the various classes concerned to the necessity of taking an active part in politics than any other one circumstance.

Other elements, however, were also of great importance. The whole intellectual movement of the last century in Europe and America was in its political tendencies steadily toward the view that every individual member of the nation is a citizen and, as such, is entitled to have his interests adequately represented in the lawmaking body of the country. Since the general adoption of the representative system in modern Europe, since the era of the French revolution, the tendency has been to realize this principle by organizing a legislative assembly in which the nation shall be represented on the basis of population, though nowhere has this tendency been able to work out its logical result.

The United States in its federal government was the first nation of any importance to accept fully the principle of national representation on the basis of population in the constitution of its lower house. It might have been

a long time before the nation would have accepted this principle had it not been for the peculiar circumstances under which the national government was formed. The state governments had been largely growths, and slow growths at that, and thus had not been compelled to face the problem of a readjustment of representation in any acute form; but the federal government was a new creation, and had to adopt and put in operation some definite principle as a preliminary to the organization of the government itself. The states have not even yet all modeled their governments on the principle then accepted by the nation for its federal form, though the example of the latter has worked steadily to shape and reshape the former.

The struggle over the basis of representation in the constitutional convention of 1787 was long and acrimonious. The fact that colonial governments, later state governments, were in existence which had gradually become more and more independent of any superior authority, made it impossible to adopt a consolidated national government without a struggle, which would probably have resulted in a civil war. A federal form with a large degree of state autonomy was therefore the only practical form of national government. As some of the states were very large and populous, while some of them were very small and only thinly populated, it was evident that a national assembly based on population alone would not be acceptable and could not be adopted by the free consent of all the states. The proposition to give to wealth a specific representation commanded practically no support. The compromise accepted was a double chamber system. One house was based on the recognition of the political units called states, giving to each state the same absolute number of representatives. The other house, while recognizing the states as political entities, was based on a distribution of members among them according to population. Thus, our house of representatives was the first considerable legislative body in the world based upon a numerical representation of the population of the nation. Provision was made for keeping the body upon this basis by prescribing in the constitution that a census should be



taken every ten years, implying thereby, although not explicitly commanding it, that a reapportionment of the members of this house should be made in pursuance of each census.

How important such a constitutional provision in regard to the reapportionment of representatives is to the actual preservation of the numerical principle, may be seen in the history of the German reichstag. The German constitution provides for a representation based upon population. The parliamentary election law adopted by the German confederation in 1867, which in this respect is still in force, adopted a representative unit, or ratio of 100,000. The population at present is over fifty millions, but no change in the house number has been made since 1867, except such as was occasioned by the accession of the South German states and the annexation of Alsace and Lorraine. The electoral districts are many of them based upon the provisional apportionment of 1848, so that it is not too much to say that the actual distribution of members in the German reichstag of to-day is based upon the distribution made fifty years ago. Thus, although in form it is a house based upon numerical representation, it has long ceased to be such as a matter of fact.

It would be a mistake, however, to suppose that even in the house of representatives the principle of numerical representation was carried through exactly. The application of the principle was confused, and thwarted by two things: first, the existence of slavery and the compromises connected with it; second, the recognition of the states as political units in the distribution of representatives.

The slaveholders maintained that the slaves should be counted in computing the population for purposes of representation. Their opponents objected to this on the ground that as slaves were property, pure and simple, and not persons, such a scheme would be a practical recognition of wealth as the basis of representation, which all parties had agreed to reject. Since the insistence by each party on its extreme view would have prevented the peaceful organization of a national government, a compromise was finally effected, according to which five slaves should be counted as three

free persons in computing the representative population. As a part of this compromise, it was further provided that direct taxes, before being collected, should be apportioned among the states on the basis of the representative population.

With the disappearance of slavery, the apportionment of representatives became purely numerical in principle so far as this feature was concerned, since the actual population was now equal to the representative population. But the other difficulty in the way of applying exactly the principle of numerical representation, namely, the recognition of the states as such in the process of apportionment, still remained.

It is of course a still more important point in discussing the subject of representation in the United States not to lose sight of the fact that, inasmuch as the representation in the lower house was to be assigned upon the basis of population, while the states were left to determine entirely for themselves who should be entitled to take part in the choice of representatives, the question of whether the national house was a more or less truly representative body turned always upon the policy which the states adopted in regard to the elective franchise. If any state limited the right to vote to a small class, or if it intimidated and drove away from the exercise of the right to vote any considerable number, it would thereby increase the proportional value of each vote belonging to those who possessed the franchise, as compared with similar persons in other states. The latter was exactly what happened at the close of the Civil war in the Southern States. The representation was considerably enlarged over what it had been in the days of slavery, for five negroes were now counted as five persons instead of three, and as the white population determined to prevent negroes from voting, and actually did so in those states where their numbers threatened to swamp the white vote, the relative power of the white man's vote was very greatly increased over that of a corresponding person in states where no such policy was followed. The same thing is accomplished by a law limiting the right to vote to those who can read and write, or those who possess a certain amount of property.

The constitution provides that the total number of representatives shall be distributed first among the states on the basis of their respective numbers. This means that the states themselves are the primary representative districts, and that in constructing representative districts, no state line should be crossed, that parts of two or more different states should not be combined in the process of making districts, etc. A moment's reflection will make it plain that such a provision makes impossible the exact application of the numerical principle of apportionment.

In the early laws regarding apportionment, the states were so plainly regarded as the primary representative districts that congress did not undertake to make any other subdivision at all, nor to require the states to make any subdivision. The actual subdivision of the states is left entirely to the individual state governments; although congress has since 1842 provided by law that the state governments should divide the states into a number of districts equal to the total number of representatives to which they are entitled. The early states, with the exception of the original thirteen, seem to have followed different systems, but it was evidently taken for granted by all parties that the states were allowed by the constitution to do as they chose in this matter, and the law that congress passed in pursuance of the census of 1840, requiring the division into single member districts, aroused a great deal of bitter feeling.

It might seem at first glance as if the assignment of representatives, the basis of representation being agreed upon, would be a very simple matter;—a mere matter of arithmetic, indeed. And so it would, if the national territory could be divided simply with reference to the apportionment itself; or, if the population numbers of the different states would arrange themselves in such relation to each other, and to the population of the union, as a whole, as would enable an exact assignment to be made; neither of which suppositions is realized under our present system. It might seem also as if the question itself would be in any case of comparatively little importance, since the difference in representation could never amount to so very much after all. This seems to have



been the view of the men who drafted the constitution,—if, indeed, they ever thought of the matter at all; for there is no indication that this subject was discussed, either in the constitutional convention or in the ratifying conventions, or in the pamphlet literature of the time, either before or after the adoption of the constitution.

And yet, the settlement of this question, simple as it appears, rocked the government of the United States to its foundation within three years after it was organized. It gave rise to the first constitutional debate, in which the value of the union itself was openly canvassed. It occasioned the president and his advisers the greatest anxiety; it called forth the first presidential veto; and was finally decided in accordance with a principle, which, after being accepted for fifty years, was ultimately rejected as being unconstitutional and unfair. The subject, therefore, is certainly not without interest to the student of political science.

The first session of the second congress of the United States met at Philadelphia, Monday, October 24, 1791. One of the first subjects of discussion was the apportionment of representatives in pursuance of the census of 1790. The returns were all completed except those from South Carolina, which were not finally declared until early in 1792.

The discussion of apportionment was begun during the first week of the session, and continued until the twenty-fourth of November, when a bill was passed in the house by a vote of 43 to 12, giving to each state in the union one representative for every 30,000 of its population, disregarding any remainders or so-called fractions which might occur. The bill was then sent to the senate. After a fortnight's discussion, on December 8, the senate by a vote of 13 to 12, the vice-president giving the casting vote, amended the house bill by substituting the number 33,000 for 30,000, leaving the rest of the bill unchanged. This the house, after a long discussion, refused to accept on December 14. On December 15 the senate, by a vote of 13 to 12, the vice-president giving the casting vote, declared its intention of insisting on the amendment. The house again discussed the subject at length, ending on December 19, by another



refusal, by a vote of 32 to 27, to accept the senate amendments. The senate, on December 20, again considered the question, but decided by the same vote as before, the vice-president giving the casting vote, to adhere to its amendment. The house then dropped the matter and the bill was thus lost. It is interesting to note that the bill which ultimately became a law was this first house bill as amended by the senate.

On January 6, 1792, the house resolved to appoint a committee to bring in a bill relating to apportionment. A proposition relating to the subject was discussed January 24, and a committee was appointed to report a bill according to certain directions of the house. The bill was reported Thursday, February 7, and, after a discussion which took a wide range, it was passed February 21 by a vote of 34 to 16. The bill was similar to the first bill passed by the house, accepting a ratio of 30,000 to be divided into the population of each state, disregarding fractions, in order to determine the number of representatives to be assigned to the state. Coupled with this, however, was a provision for a new census, and a new apportionment in 1797, the house evidently hoping to persuade the senate to accept its proposition by holding out the inducement of a speedy reapportionment.

The senate discussed the bill from February 21 to March 12, and passed it on that date by a vote of 14 to 13, amended in some important respects. The senate struck out the provision for a new census. The representative number 30,000, proposed by the house, was accepted, but instead of giving to each state one representative for every 30,000 and no more, it gave one additional representative each to the eight states having the largest remainders or fractions. The method pursued in determining the number was not indicated in the bill, but either of two ways amounting to the same thing on the whole may have been pursued.

The house, after discussing the bill, again refused, by a vote of 31 to 30, to accede to the senate amendments, and on the seventeenth of March requested a conference with the senate. A conference committee was appointed, but on March 22 it reported in both houses that no agreement

could be reached. The senate then voted to insist on its amendments by a vote of 14 to 13. On the next day the house finally accepted the senate amendments by a vote of 31 to 29, and on March 28 the bill was sent to the president for his signature.

Having kept the bill as long as he could without its becoming a law, the president returned it with his veto on April 5. On the next day an attempt was made to pass it over the president's veto in the house, which failed, since only 33 votes could be obtained for it, which was not the required two-thirds.

The house then, on April 10, drafted a third bill, incorporating the principle of the senate amendment to the original bill as passed by the house, which was accepted by both houses, and signed by the president on the fourteenth of April. It provided for giving to each state in the Union one representative for every full ratio of 33,000 and no more, giving a house of 105 members.

The opening debate in the house of representatives on the first bill evidently covered a wide range of considerations, though the report of the debate in the *Annals of Congress* is so meagre that we cannot be sure of the relative prominence which these various considerations assumed in the minds of the members of the house, and we are somewhat dependent on outside sources for an adequate account of the course which the discussion actually took. The debate was more largely academic in character than at a later time, and an air of calmness and deliberation prevailed which soon disappeared.

At first it seems to have been almost taken for granted by the members of the house that the first thing to do was to decide what number of people should be entitled to a representative. Having determined this, the next step was to divide this number into the representative population of each state, assigning to each state a number of representatives equal to the number of times its representative population contained the representative ratio. The size of the house then appeared by adding together these various quotients. As individual representatives could not be divided,

it was evident that any remainder left after dividing the representative ratio into the representative population of the state would have to be disregarded.

There was a decided difference of opinion in the house as to the number of people to be taken as the ratio, and that for very different reasons. Some members were in favor of fixing upon a relatively large number as the representative ratio, thus obtaining a relatively small house; others were in favor of taking a small representative ratio, thus obtaining a relatively large house. The greatest difference, however, between the two extreme ratios seriously proposed would not seem to us, judged by our present standards, to be very much, or the matter whether one or the other was taken to be of very great importance. It is difficult for us to understand, without an examination of the circumstances, how this difference of opinion could have occasioned such a tempest as actually arose. The constitution in Article I, Section 2, Clause 3, declares that, "The number of representatives shall not exceed one for every 30,000, but each state shall have at least one representative."

One or two members proposed a ratio of 50,000, but no serious proposition supported by any considerable number of members was made looking toward a larger ratio than 40,000; so that the choice lay between 30,000 and 40,000, and a house of 112 members and one of 82, respectively.

Different members favored taking as the ratio one of another of the round numbers between 30,000 and 40,000 on different grounds. Upon dividing the representative population of each state by the round numbers from 30,000 to 40,000, respectively, it was found that in the case of some of these numbers there were fewer remainders and consequently a smaller unrepresented population than in the case of other numbers. The number 33,000 was a favorite unit, because it left, relatively speaking, a comparatively small number of unrepresented people, while it allowed a considerable increase in the size of the house, and those members whose attention was fixed upon the question of an equal and fair distribution naturally inclined to favor this number.



When the bill came back from the senate amended by striking out 30,000 and putting in 33,000 and the argument was advanced that the senate had been moved to this step by the fact that in this way the unrepresented fractions were reduced to a much smaller total, Mr. Benson remarked that there was another possible way for assigning representatives which, if it had been thought of in time—that is, during the first debate in the house—might have commanded the assent of all the members. He then proceeded to set forth a method which had been proposed in the senate as an amendment to the bill, but which had been voted down. It was ultimately incorporated in the second bill as passed by the two houses, and vetoed by the president. It is fully set forth above.

The sentiment of the house during this first debate was very plainly in favor of the largest house which was allowed by the constitutional method of assigning one to every 30,000 of the population. The debate upon the question of whether the house should be a large or small body is of interest as throwing some light upon the experience of the country in representative institutions up to that time. The considerations in favor of a large representation outweighed even the feeling of many that if the ratio of 30,000 were taken, there would be a less fair and equal distribution of representatives than would be accomplished by the ratio of 33,000. The matter went to the senate. The vote in the senate was an extremely close one, and this fact formed an element of considerable importance in President Washington's decision to veto the bill.

The senate amended the bill finally, rejecting all proposed amendments by adopting a ratio of 33,000, applying the same method of determining the size of the house as that which the house had used in the bill.

When the bill was returned to the house with the senate's amendments, proposing the sum of 33,000 instead of 30,000, evidence soon began to show itself of a growing heat on the subject, and the excitement began which continued until the final settlement of the question in the following April.

It was argued in the first place that this was a question which belonged particularly to the house, one which really



did not concern the senate at all; and although the constitution gave to congress, or the legislative authority of the federal government, the right to determine the size of the house, and the actual apportionment in accordance with the constitutional rule, yet, after all, it was something which, by its very nature, pertained especially to the house, and with which the senate ought not to interfere, especially as it had passed the house, both in committee of the whole and in ordinary session, by a large majority.

But the return of the bill gave occasion to a more careful discussion of the subject of fair apportionment than that question had received during the first debate. The reason was given in the house for the senate amendment that a better regard was had to fractions and that there was consequently a more exact apportionment under the senate proposition of 33,000 than under the house proposition of 30,000. It was urged, however, in answer to this proposition that this subject had been fully discussed in the house and distinctly rejected after a careful deliberation on all sides. Emphasis was now laid upon the fact which had been observed before, that the effect of adopting the ratio of 33,000 instead of 30,000 was to diminish the fractions in the Northern and Eastern states and increase them in the Southern, and that the real reason for the adoption of the 33,000 was not that it secured a greater degree of fairness in the distribution, but that it secured for the controlling element in the senate an additional power.

It was also urged strongly that the 30,000 basis gave an undue advantage to the large states over the smaller. In answer to this it was urged that the smaller states already had a strong representation in the senate and that if there was to be any inequality it ought to be to their disadvantage, rather than to the disadvantage of the large states which were placed in such an inferior position, considering their relative size and population, in the upper chamber. The advocates of the smaller states, however, replied that the constitution of the senate was one of the compromises of the constitution, and that they were not called upon to give up such advantage

as they received in the senate, by consenting to be put at a disadvantage in the house.

It was admitted by the advocates of the 33,000 ratio that under it the North was somewhat over-represented, but it was held that it was much better to have the North slightly over-represented than the South enormously over-represented, more especially as the South had already received an advantage in the constitution of the house by being allowed a representation for its property in the form of slaves. To this the Southerners replied that that was also one of the compromises of the constitution, and that they were not called upon by any demand of equity to give up this advantage which had been conceded to them in the constitution by consenting to an inequitable assignment of representatives. It was, moreover, in their opinion, a grave question whether the South had, after all, taken sufficient guarantees of the North in regard to the matter of slavery, and whether the growing disproportion between the North and the South in wealth and population would not call for still further guarantees in behalf of the South in course of time.

It was at this time that the amendment proposed in the senate providing that the ratio of 30,000 should be accepted, but that additional members should be assigned for large unrepresented fractions, was proposed in the house; but it was disposed of very cavalierly as scarcely worthy of discussion.

After a vigorous debate the house decided to abide by its original proposition and returned the bill to the senate. The senate, however, by the same majority as in the previous case, insisted on its own amendment, and returned the bill to the house. The third debate on the subject brought out finally all the different points of view, and the arguments for them, in such a way that there was really nothing further to be said in the course of the debate as a whole, and nothing further was really added to the discussion by subsequent debates. It was at this time of the proceedings that the proposition to adopt the 30,000 basis, assigning additional members for large unrepresented fractions, was discussed in extenso.

Mr. Ames, of Massachusetts, seems to have championed the proposition most vigorously, and he insisted very strongly that the idea of a fair and just apportionment was fundamental to the peaceful working of the government, and then undertook to show how neither of the ratios proposed, 33,000 and 30,000, provided for as fair a distribution as the 30,000 combined with the assigning of additional representatives to large unrepresented fractions. It is true that by this bill some states would lose members, and some would gain, but a comparison of the respective gains and losses would show that, on the whole, a much nearer approximation to equality would be obtained by this method than by any other. Mr. Ames also held that the arguments against this method were really no arguments at all, notably, the one that the discrimination against the small states in the original house bill was justified by the greater advantage the small states had in the senate; since the large states were injured as well as the small ones. Massachusetts and North Carolina could not be benefited by giving Virginia two extra members, while the small ones were also injured as respects each other. Delaware would have only one, Rhode Island two, yet the latter had only 9,000 more inhabitants than the former.

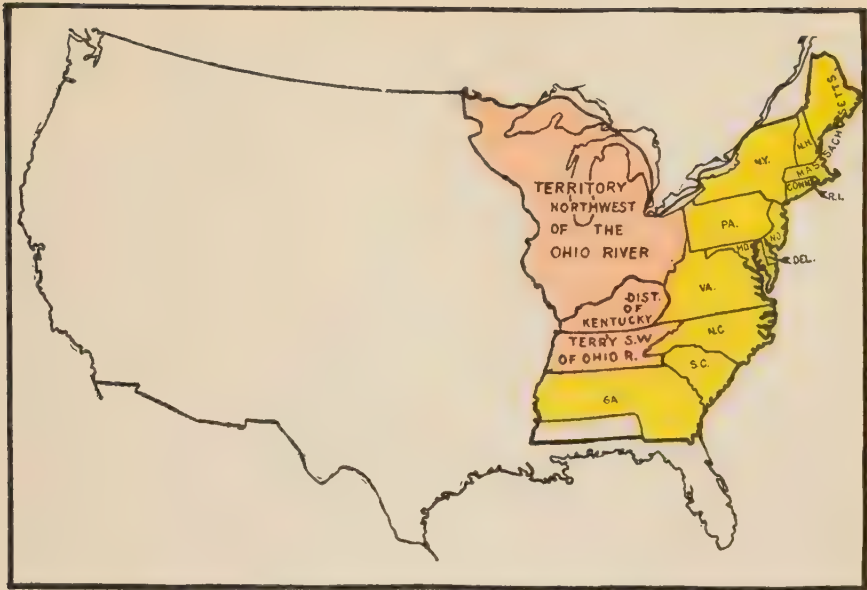
Mr. Ames made the further argument that the same rule was to be adopted in regard to the apportionment of direct taxes as in regard to the apportionment of representatives. They were to be distributed on the basis of representative population. Now would Virginia consent to assume such a disproportionate share of the taxes as it had received of the representatives? This could hardly be thought to be likely, and no one indeed asked that Virginia should assume an unfair proportion of direct taxes nor was he content to have it receive an undue share of representatives.

The chief argument against this position of Mr. Ames was a constitutional one. It was pointed out that by such an assignment the number of people within certain of the states who should receive a representative would be smaller than 30,000, whereas the constitution declared distinctly that the number of representatives should not exceed one for every 30,000. This is an important point, because it

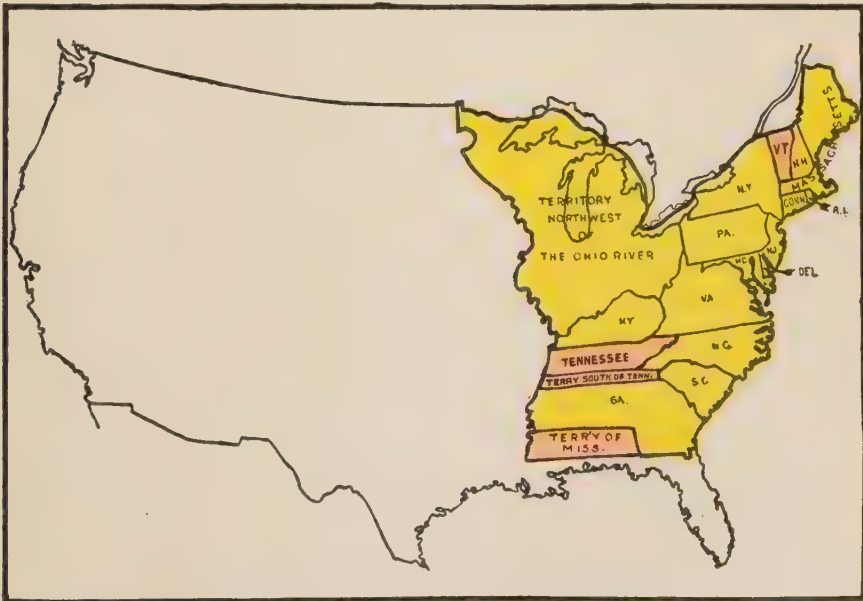








NO. 3.—1781-1790, SHOWING FIRST ORGANIZATION OF TERRITORY CEDED TO THE UNION BY THE COLONIES FROM 1781 TO 1790. (ALL OF THE COLONIES EXCEPT GEORGIA HAD DURING THIS TIME CEDED THEIR WESTERN TERRITORY)



NO. 4.—1790-1800, VERMONT CUT OFF FROM NEW YORK AND ADMITTED AS A STATE (1791). TENNESSEE FORMED AND ADMITTED AS A STATE (1796). AND ADJACENT TERRITORY AT THE SOUTH DESIGNATED AS "TERRITORY SOUTH OF TENNESSEE." TERRITORY AT THE EXTREME SOUTHWEST ORGANIZED AS TERRITORY OF MISSISSIPPI



was one of the two grounds upon the consideration of which President Washington made up his mind to veto the bill.

Those who favored this method of apportionment declared, however, that that was a wrong interpretation of the constitution. The constitution declared that the number of representatives should not exceed one for every 30,000; it said nothing in express terms as to whether it meant 30,000 of the population in the respective states, or 30,000 in the country as a whole. It was proper to give no meaning to this phrase which would practically nullify or render meaningless that other distinct and express provision of the constitution that the apportionment among the states should be according to their respective numbers. No method of actually making this apportionment was prescribed, and, consequently, any method was proper provided it gave an exact distribution of the representatives, and of two or more methods which might be applied, that one was, plainly and constitutionally speaking, obligatory which secured the nearest approximation to an exact numerical apportionment. And to the argument repeatedly made up to that time in the course of the discussion that the Southern states were not called upon to give up any advantage accruing to them out of the application of the constitutional rule, it was declared that there was no such constitutional rule; that the expression might have either meaning if taken by itself, but that the context made it perfectly plain that it meant the number of representatives was not to exceed one for every 30,000 of the entire population of the union. It was also maintained that the amendment which had been proposed by congress to the various states, and which had already been accepted by a number of them, although using practically the same language as the constitution, was capable really only of the one interpretation, limiting the size of the house not by the number of times 30,000 was contained in the population of the respective states, disregarding fractions, but the number of times it was contained in the population of the union as a whole.

It was an admirable illustration of a true constitutional question, a provision in a written instrument capable of two interpretations, conferring, according as one or the other



interpretation was taken, distinctive and solid advantage upon one or another political element, in this case, one or another state, or one or another section. It became perfectly plain that the jealousy which had existed more or less as a latent force during the colonial and revolutionary periods, which had shown itself in such a marked way in the constitutional convention, had by no means been allayed by the four or five years which had intervened. On the contrary, the signs were already ominous of the conflicts of the future, and this first debate brought to a head—to an open expression suspicions and jealousies which men had been more or less trying to cover up and repress. It is noticeable that Virginia had been picked out especially as a state which profited by the application of the ratio of 30,000, regarding fractions; and it was three Virginians who persuaded the President to insist on the principle of the house bill.

In spite of the able and long discussion, the house insisted upon its original amendment, and the bill was returned to the senate. The senate, however, refused to recede, and the bill was lost. When it was taken up again, there was a repetition of the same arguments and the same points of view, but the house decided in the second bill, described above, to insist upon the method which it had adopted before, but it incorporated two provisions by which it hoped to disarm the opposition of the senate. It provided for a new census within a brief period of five years, and provided, moreover, that the principle of apportionment should be fixed in advance of the taking of the census. It was openly stated, and with a great deal of truth, that if the house had agreed upon some method of apportionment before the actual returns of the census had shown which states would be placed at a relative advantage or disadvantage under the application of such rule, there would have been no difficulty in the first place, and the provision of the house involved making the apportionment a mere ministerial act on the part of the president, but in accordance with the principles which it proposed to apply now to the first apportionment.

These sops, however, did not tempt the senate. After another discussion of considerable length, the senate took up

the amendments which had been proposed first by a member of the senate, namely, the application of the 30,000 ratio with the representation of large remainders. This was returned to the house; the house refused to accept it. A conference committee was appointed, which failed to agree. The house then receded from its decision and finally accepted the proposed amendment of the senate. The bill then went to the president.

On Thursday, April 5, 1792, the president sent to the house of representatives a veto of the bill which had been passed on March 28. The veto read as follows:

"Gentlemen of the House of Representatives:

"I have considered the act passed by the two houses, entitled 'An act for the apportionment of representatives among the several states according to the first enumeration,' and return it to your house wherein it originated with the following objections:

"First. The constitution has prescribed that representatives shall be apportioned among the several states according to their respective numbers, and there is no one proposition or divisor which, applied to the respective numbers of the states, will yield the number and allotment of representatives proposed by the bill.

"Second. The constitution has also provided that the number of representatives shall not exceed one for every 30,000, which restriction is by the context and by fair and obvious construction to be applied to the respective and separate numbers of the states, and the bill has allotted to eight of the states more than one for every 30,000.

(Signed)

"G. WASHINGTON."

It will be observed that the president retained the bill in his hands as long as it was possible for him to do so without its becoming a law by the provision of the constitution that all laws shall pass into effect ten days (Sundays excepted) after they have been sent to the president, unless he returns them to the house with his veto, or congress, by its adjournment, refuses to allow him the ten days for considera-

tion. This period he had used in a most careful and anxious consideration of the bill. The great excitement which it had caused; the very close vote by which it was passed in both houses; the open charge that one section was trying to get the advantage of the other; the bitterness which had appeared in the course of the discussion—all combined to give President Washington a very serious problem, which caused him much worry and thought. He asked the opinion in writing of each member of his cabinet. The secretary of the treasury, Alexander Hamilton, of New York, and the secretary of war, Knox, of Massachusetts, approved the bill on the whole, and advised him to sign it. The secretary of war was rather undecided in his opinion, and the secretary of the treasury, thinking that neither of the mooted constructions of the constitution could be absolutely rejected, held that it would be proper to accede to the interpretation given by the legislature. The secretary of state, Jefferson, and the attorney-general, Randolph, both of whom were from Virginia, expressed their disapproval. It will be seen that the division in the cabinet was as strictly along geographical lines as it had been in the house. This made it naturally very difficult for a man of as impartial and judicious a mind as Washington to come to a decision upon the question.

Jefferson, with his general tendency to claim credit for nearly all the positive actions of Washington which were in accordance with his views, states in his Diary that he and Randolph drew up the veto message.

He declares that on April 6, the president called upon him before breakfast to have further conversation upon the apportionment bill, in reference to which Jefferson had already given his opinion in writing. Washington agreed that the method provided in the bill was contrary to the common understanding of that instrument and to what was understood at the time by the makers of it, but that the constitution would bear the construction which the bill implied. And, inasmuch as the vote for and against the bill was perfectly geographical, a Northern against a Southern vote, he feared that he should be thought to be taking

sides with the Southern party if he sent in a veto. Jefferson admitted the motive of delicacy, but insisted that the president should not allow this feeling to lead him to a wrong course of action in the matter, and urged the dangers to which the scramble for the fractional members would lead if such a principle should once be adopted. Washington then expressed his fear that there would, ere long, be a separation of the union, for the public mind seemed to be dissatisfied and tending toward this end. Upon returning home, he sent for Randolph, the attorney-general, and asked him to get Mr. Madison, and if after conference with Jefferson they all three concurred in the opinion that he ought to veto the bill, he desired to hear nothing more about it, but that they should draw up the instrument for him to sign. Randolph, Madison and Jefferson having come together with their minds made up beforehand, drew the instrument, and Randolph took it to the president with the statement that they all three agreed to it. Washington walked with him to the door, and, as if he still wished to avoid the responsibility for the action, said to him, "And you say you approve this yourself?" Randolph replied, "I do upon my honor;" upon which Washington instantly sent the veto to the house of representatives.

Jefferson's opinion upon the desirability of vetoing the message is by far the most elaborate and carefully considered one of those submitted. It incorporated the views which the president finally accepted in the message itself. At the conclusion of an exhaustive argument he affirmed that if he regarded the bill either as a violation of the constitution, which it seems to be, or as giving merely an inconvenient and difficult interpretation to its words, it is a case wherein the president ought to interpose his veto, and that for the following reasons:

1. The non-user of his negative begins already to excite the belief that no president will ever venture to use it. This has consequently begotten a desire to raise up barriers in the state legislatures against congress throwing off the control of the constitution.



2. The veto can never be used more pleasingly to the public than in protecting the constitution.

3. No invasions of the constitution by congress are so fundamentally dangerous as the tricks played on their own numbers, apportionment and other circumstances respecting themselves, and affecting their local qualifications to legislate for the union.

4. The majorities by which this bill has been carried, to wit, one in the senate and two in the house of representatives, show how divided the opinions were there.

5. Everybody admits that the constitution will bear the interpretation here insisted upon, whereas a large minority, both in and out of congress, deny that it will bear that of the bill.

6. The application of any one ratio is intelligible to the people and will, therefore, be approved, whereas the complex operations of the bill can never be comprehended by them, and though they may acquiesce, they certainly cannot approve what they do not understand.

It is interesting to note how squarely the drift of subsequent opinions expressed by jurists and practical men set against the conclusions of Jefferson and Washington. The veto of Washington practically settled the policy of the government for fifty years, and indeed no serious discussion again took place in regard to the question for forty years after the passage of the apportionment bill of 1792; but when the debate was resumed in 1830, the party opposed to the most important portion of Washington's opinion, although it did not carry its point immediately, convinced the country of the justice of its view, so that it was adopted as the next apportionment bill in pursuance of the census of 1840, and has remained up to the present time the rule of action. Judge Storey, in his "Commentaries" says: "The first reason assigned by Washington is as open to question as any one which can well be imagined, in the case of real difficulty of construction. It assumes at its basis that a common ratio or divisor is to be taken and applied to each state, let the fractions and inequalities left be what they may. Now this is a plain departure from the terms of the constitution."

This expresses, on the whole, the opinion to which the majority of fair-minded men who have considered the question are driven; a conclusion which rejects as entirely unsound the line of reasoning adopted by Washington in his first objection to the bill, and by Jefferson in his opinion to the president as to the desirability of vetoing the bill.

Washington's second objection to the bill ceased to have any possible significance after the second census, since nobody proposed to extend the size of the house in such a way as to make it possible for any state to have more than one representative for every 30,000, except in the case of those states which were entitled to only one representative and whose population failed to reach this figure. Webster and Everett, in their celebrated arguments for the representation of fractions, both agreed that Washington's objection was a valid one, but in neither case was any special attention given to the question since it had no significance for the matter before them, and it was a part of the policy of both these astute reasoners to concede every unessential point to their opponents.

It is difficult, however, to see on what ground the first objection can be sustained which is not applicable to the second also, although Judge Storey declares that the second reason assigned by the president against the bill was well founded, in fact, and entirely conclusive. It would seem on the contrary, if the argument be fully examined in both cases, that there is no better reason for one objection than for the other; indeed that both rest upon the same view as to the necessary interpretation of a certain clause in the constitution which our commentators and statesmen have since come to agree is plainly wrong, and, so far from being deducible from the constitution, flies directly in the face of its plain and simple meaning.

It has then come to be generally accepted by all parties that the constitution requires an apportionment of the representatives among the states as nearly as possible according to their respective numbers, and that, although no method is expressly prescribed by that instrument, yet of all the possible methods that one is plainly the constitutional one by

which a result corresponding to the rule of strict proportionality is secured.

The general rule adopted to secure this is to determine the amount of the population which should be entitled to one representative in congress and, after having allowed a representative for each of these numbers, to allow to every state an additional member for each fraction of its numbers exceeding one-half of the ratio, rejecting from consideration the smaller fractions. This rule has, however, not been observed strictly and its adoption has not made apportionment the perfectly simple and easy problem which it would seem at first blush that it should be.

# THE MARCH OF THE CONSTITUTION.

BY GEORGE R. PECK.

[George R. Peck, general counsel Chicago, Milwaukee and St. Paul railroad; born Steuben county, N. Y., May 15, 1843; educated public schools; entered Wisconsin volunteers as private and was mustered out as captain at close of Civil war; practiced law in Wisconsin, 1871-4; in Kansas 1874-93; since 1893 in Chicago. United States district attorney for Kansas, 1874-9; general solicitor Atchison, Topeka & Santa Fe railroad, 1881-95; appointed United States senator from Kansas, 1892, but declined; since 1895 general counsel of Chicago, Milwaukee and St. Paul railroad; well-known as an orator on public occasions.]

For something more than a hundred years the United States have enjoyed—or have had the right to enjoy—the protection of a written constitution. Its sanctions and its guaranties have been with them and over them so long that they often seem to be only natural and everyday rights, immemorially existing. But the federal constitution was a great creative work. It established a union of states and breathed into it the powers and attributes of nationality. It was a new departure; for, until then, though there had been various leagues and federations united by written covenants, and some small local constitutions, there had been no attempt, anywhere in the world, to make a written constitution on a large scale—one that should be the supreme organic law for a great nation. What is a constitution? The question is more difficult than it seems. In a general way, however, it may be said that it is the system or body of fundamental principles, written or unwritten, under which a nation, state or body politic is formed or governed.

Unwritten constitutions, like the British,—that ancient fabric which our fathers knew and revered,—are evolutionary, growing from year to year, from reign to reign, and from century to century. An unwritten constitution is never completed; for, silently with the growth of years, it is modified and enlarged to meet the exigencies of what Gladstone termed “progressive history.” It is an old story; on one



side successive demands, on the other successive refusals, until that which was stubbornly contested, finally settles down and becomes incorporated in the great catalogue of indisputable rights.

It is, perhaps, not quite accurate to speak of the British constitution as an unwritten one, for its great features were written in black and white to the end that they should never be forgotten. Such was Magna Charta, of which Professor Stubbs says that the entire body of English constitutional history is but a commentary upon it. Such was the Petition of Rights; the Habeas Corpus Act of 1769; the Bill of Rights and the Act of Settlement. These are parts of the British constitution, not because they are in writing, but because they are of such fundamental character that they are presumed to inhere in the common rights of British subjects.

But it need not be said that the British constitution, however splendid its proportions, could not suffice when the American people proposed to embark upon a career of separate nationality. They had their local charters, constitutions and laws; they had the articles of confederation, and each had for itself the English common law. But all these did not and could not make a national government. Surely never did men face a graver responsibility than did those who undertook to bring order out of the chaos which then enveloped them. They proposed "to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to themselves and their posterity." This lofty enumeration of their purposes was, in itself, a solid judgment upon the Articles of confederation, which, indeed, all men knew were entirely inadequate for gathering or holding the fruits of their struggle for independence. "The confederation," in the language of that great lawyer, Horace Binney, "was no more than the limited representative of other governments, and not a government itself. It was a league of sovereigns, but not a sovereign." Indeed, it is not a just use of language to call that a government which had no executive, no coercive power, no power of energetic offense or defense, and no means of raising

revenue beyond the voluntary contributions of different states. Washington's genius was of that sane, clear-eyed quality which does not often indulge in figures of speech; but the man who never gave up hope when his armies were in the field against appalling odds said, in 1786:

"It is clear to me as A, B, C, that an extension of federal powers would make us one of the most happy, wealthy, respectable and powerful nations that ever inhabited the terrestrial globe. Without them, we shall soon be everything that is the direct reverse. I predict the worst consequences from a half-starved, limping government, always moving upon crutches, and tottering at every step."

The father of his country seldom suffered his mind to be moved from its serene equipoise; and it was surely an alarming situation that could wring such language from him. And so the convention which framed the federal constitution was called. It is curious to note how little was said by those who pressed upon the people and upon the state governments the necessity of a convention, about the paramount reason that was in their minds, which was, that the country was rapidly drifting into anarchy.

The governors and dignitaries who were working together to bring about a convention, the legislatures who passed resolutions in favor of it, and the great leaders who in private life were so influential in moulding public opinion, generally veiled the real meaning of the movement by talking about the necessity of a better understanding in respect to their commercial relations, a fair distribution of trade, the construction of canals and other such matters, which, though certainly important, were as nothing when compared with the immediate and imperative necessity of transforming the confederation into a government of real national vigor, possessing not only the authority which belongs to a nation, but the power to vindicate it at home and abroad.

It is a hard thing to make a constitution—still harder to make a good one, or one which can be relied upon to stand the strain of actual use. Nevertheless, the delegates undertook the task, and began in a way that augured well for the success of their efforts, when on May 25, 1787, by a unani-

mous vote, they chose George Washington to preside over their deliberations. In a little less than four months the work of the convention was finished. The instrument they framed is known to all—at least its language and the general scope of its various provisions. Time has shown and every year it becomes clearer, that Gladstone's oft-quoted panegyric was profoundly true, when he said: "The American constitution is the most wonderful work ever struck off at a given time by the brain and purpose of man." The men who framed it were not mere visionaries. They were, almost without exception, calm, thoughtful men, who thoroughly appreciated the problem they had to solve, and knew that it could not be worked out by declamation, nor by passionate discussion of the abstract rights of man, nor by mutual congratulations that they had wrested from the mother country an acknowledgment of their independence. They were called upon to construct,—or, rather, reconstruct,—and to that great task they bent their energies, patriotically, intelligently and triumphantly.

The constitution our fathers made had the marching quality in it; and our history records how it has marched in good and evil days, sometimes through perils and difficulties, sometimes seeming almost ready to halt, but always moving forward. The people who framed it, and the people who adopted it, never considered it perfect; some of the members of the convention refused to sign it, and its adoption was fiercely opposed in many of the states. In the convention, Franklin, old and feeble in body, but with unimpaired intellectual vigor, urged the members to sink their personal objections for the sake of the great issue at stake. "Thus I consent, sir, to this constitution," he said, "because I expect no better and because I am not sure it is not the best. The opinions I have had of its errors I sacrifice to the public good." Though the work of the convention was not entirely satisfactory to any member, nearly all accepted it as the best then attainable, and only three refused to sign it. It was nearly three years before all the states came in under it, and when Rhode Island gave her tardy assent, the government of the Union was already in operation, George Wash-



ington was president, and the constitution had begun its march.

It is impossible to overestimate the difficulties that confronted the men upon whom devolved the duty of administration in the new government. They were to be guided by the constitution, but the constitution itself was not entirely clear, and many different views were held as to its meaning. It was the result of a large number of compromises between different classes of political thinkers and between different localities and interests. As has been truly said, "Nobody liked all its provisions and everybody feared some of them." And yet, no one can doubt that its adoption was a great, wise and patriotic act; for all experience has shown that statesmanship is not the obstinate reaching out for the unattainable, but the acceptance of the best that is within reach. It was the profound recognition of this truth that secured its adoption, without the provisions soon afterward incorporated in the first ten amendments, the absence of which in the original draft caused so much opposition. The good sense of the American people accepted the work of Washington and the convention over which he presided, as infinitely better than the confederation, even if there were in it, to the minds of most men, obvious imperfections. But the constitution was adopted; and those who had opposed it were loud in their prophesies of failure; and those who had supported it were not without doubts. Its friends could only admit frankly that it was an experiment which must wait the test of time.

The organization of the government under the constitution was one of the greatest events in human history. It was not a dramatic affair, such as when Napoleon put upon his head the iron crown of Lombardy; it was grave and stately in a certain republican fashion as became a people who were establishing a nation, with a fixed, a determinate organic law, and were proposing to move forward within its limits. But what were its limits? What were the powers of the new government? Were the people of the United States a nation with a national government, or only citizens of their respective states and of a federal union of states?



These questions had not been settled in any authoritative way. As Judge Cooley has said: "The decision upon them, when thus presented, might determine whether the constitution was to be a bond of union or a rope of sand; for the practical construction might make it one or the other. "When the time is considered, and the circumstances under which the duty of authoritative construction must be entered upon, one cannot fail to be impressed that peculiar qualifications were essential in the person who would preside over the body to whom that duty would be entrusted, and who would give direction to its thought. He ought certainly to be a learned and able lawyer; but he might be this and yet fail to grasp the full significance of his task. A 'mere lawyer' might see in the constitution nothing but an agreement of parties, to be construed by technical rules; it required a statesman to understand its full significance, as an instrument of government instinct with life and with authority."

In the language I have quoted the phrase "a mere lawyer." Far be it from me to say that "a mere lawyer" may not be a very well-meaning and useful man. But he never was and never will be a great judge. In this country, every judge, state and federal, is, or may be, called upon to decide questions arising under constitutions, and such questions require historical knowledge, an insight into the meaning of organic laws, of the duties and obligations of citizenship, and, finally, of the great purposes of a constitutional and institutional government. John Jay, our first chief justice, was lawyer, statesman, and diplomat, a student of literature and a man of unbending integrity and spotless character. To his hands and the hands of his associates the new and untried constitution was entrusted.

It is interesting to read the proceedings of the court in those first days, when questions of practice and procedure were constantly coming up and receiving the careful consideration of the court, and were about the only questions before it. There was little business in the eleven years which preceded the appointment of Marshall, and only six constitutional cases were decided. In one, *Ware vs. Hylton* reported in 3rd Dallas, John Marshall was counsel for defendant in error,

and was badly beaten, all the judges save Iredell being against him—and Iredell against him on part of the case. This was at the February Term, 1796. Five years later, on February 4, 1801, John Marshall himself took his seat as chief justice of the court which had turned a deaf ear to the only argument he had made before it.

Thus far the constitution had marched; but it must be admitted its pathway had not been a smooth one. The people had already learned that the Supreme court was a body claiming enormous powers—powers that thousands of good men viewed with sincere alarm. From the first the country had been divided on the question whether there should be a strong national government, operating directly upon the people, or a mere agency for certain purposes, while the vigor of effective government should remain in the several states. In the convention and before the people there had been earnest, sometimes angry, discussion of the question. Those who had hoped that it would be settled by the language of the constitution itself were doomed to disappointment, for, studying it sentence by sentence and line by line, it was evident that the argument was not closed. The question was simply changed from: "What government is best?" to "What government has the constitution actually given us?"

The Supreme court had been eloquently called "the living voice of the constitution," and from its organization it had courageously assumed the right to speak the final word as to its meaning, and as to the rights it grants and the obligations it imposes. We are so much accustomed to connecting the name of Marshall with the establishment of constitutional principles that we have hardly done justice to the court as it stood before his appointment. They were learned men, they were honest men, and they were—which is scarcely less important—firm and unwavering in the performance of every judicial duty. When *Crisholm vs. The State of Georgia* was brought before them, the country was aflame with excitement. Mingled feelings of astonishment and indignation filled men's minds at the thought of bringing a sovereign state into court like an ordinary debtor.

The opinion of Justice Wilson—himself one of the signers of the constitution—is a quaint and curious piece of judicial literature.

“This is a case of uncommon magnitude,” says Justice Wilson. “One of the parties to it is a state; certainly respectable, claiming to be sovereign. The question to be determined is, whether this state, so respectable, and whose claim soars so high, is amenable to the jurisdiction of the Supreme court of the United States? This question, important in itself, will depend on others more important still; and may, perhaps, be ultimately resolved into one, no less radical than this—“ ‘Do the people of the UNITED STATES form a NATION?’ ”

This grim question was destined to rise from time to time until finally answered on the battlefield. Judge Wilson gave his own answer toward the close of his opinion in these words:

“Whoever considers, in a combined and comprehensive view, the general texture of the constitution, will be satisfied, that the people of the United States intended to form themselves into a nation, for national purposes. They instituted, for such purposes, a national government, complete in all its parts, with powers legislative, executive and judiciary; and, in all those powers, extending over the whole nation.”

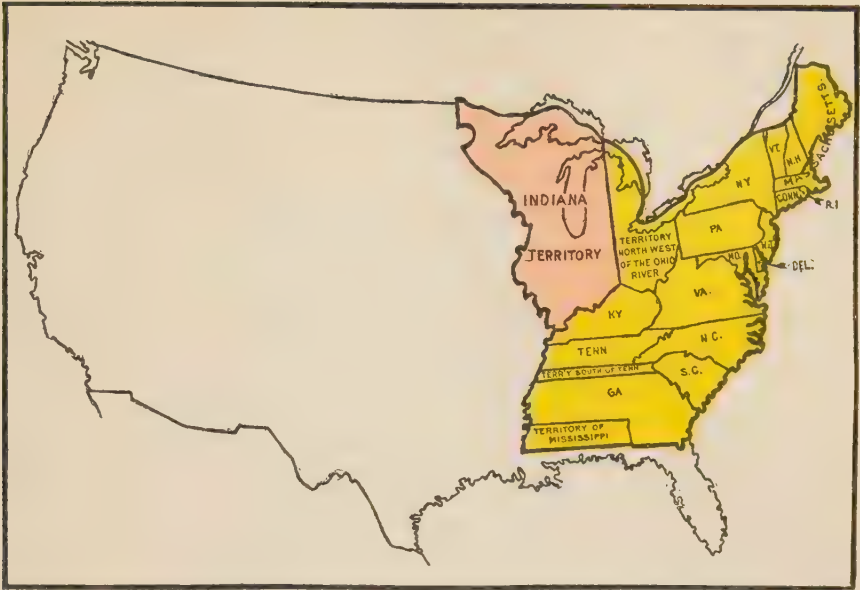
When it became known that the court had held the state of Georgia to be suable by a private citizen, an overwhelming demand went up for an amendment to the constitution, and so the eleventh amendment was straightway adopted. A large portion of the people thought the decision in *Crisholm vs. Georgia* wrong, and it must be admitted that the question involved was a very doubtful one, and to this day lawyers differ as to its correctness. But the adoption of the eleventh amendment removed the question from discussion, except by historical students.

When Marshall took his seat it was plain enough to all that he would have many uncomfortable experiences and much rancorous criticism. Though he was of a singularly calm and equable temperament, no one in the station to which he was called could expect to escape the hostility of faction.

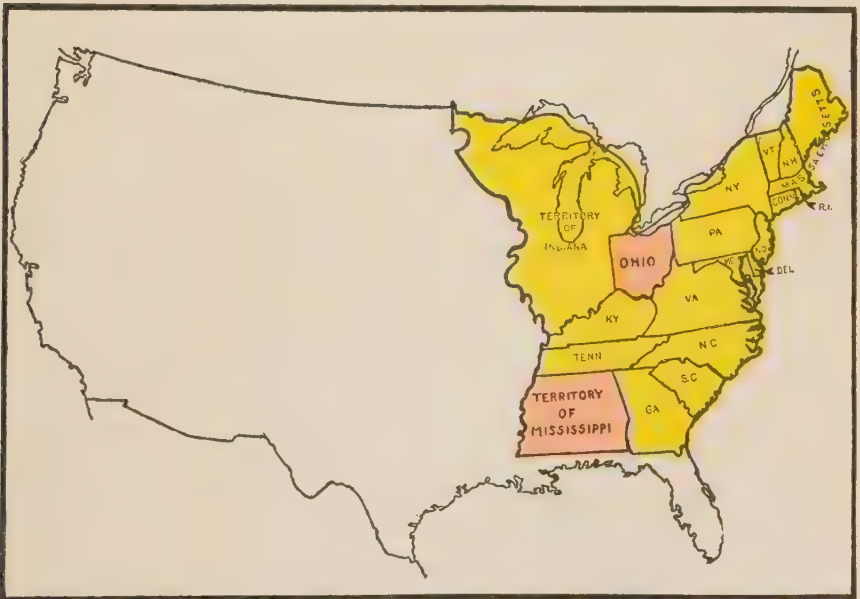








NO. 5.—1800. "TERRITORY NORTHWEST OF THE OHIO" DIVIDED AND THE WESTERN PART ORGANIZED AS "INDIANA TERRITORY."



NO. 6.—1802-1804. OHIO ADMITTED AS A STATE AND THE REMAINDER OF THE TERRITORY NORTHWEST OF THE OHIO ATTACHED TO INDIANA TERRITORY (1802). GEORGIA CEDES HER WESTERN TERRITORY TO THE UNION (1802), AND THIS AREA AND THE UNORGANIZED TERRITORY SOUTH OF TENNESSEE WERE INCORPORATED WITH MISSISSIPPI TERRITORY (1804).



He was a federalist; and Jefferson, whose administration came on less than a month after Marshall's appointment, was a republican. These two great men, both Virginians, both patriots, both sincerely devoted to the principles of constitutional liberty as they understood them, entertained for each other a dislike almost amounting to hatred. Each considered the other a dangerous enemy to the liberties of his country, and neither concealed his opinion from his intimate friends. The result was bitter hostility, more or less hidden by the proprieties which rested upon each, but still well understood by their friends and partisans.

When Marshall came to the bench, he had to face the question which Judge Wilson had asked in *Chisholm vs. Georgia*,—"Is the United States a nation?" And he answered it in those monumental opinions which preserve his memory and will preserve it forever. The first case in which Marshall was called upon to go deeply into the theory of our government is *Marbury vs. Madison*, a case familiar to the profession as a great landmark of constitutional law. Though the writ of mandamus was denied, the chief justice showed by a wealth of argument which has never since been questioned that the relator was entitled to the writ—though not from the Supreme court. The great value of the decision lies not so much in the conclusive demonstration that all officers of the government are, in the performance of their ministerial duties, bound by the law, and subject by the courts, as in the luminous and convincing discussion of the question: "What is the duty of the judiciary when a statute not authorized by the constitution is asserted as the basis of a legal right?" If Marshall had hesitated or flinched, if he had parleyed with duty or compromised with consequences, our experiment of a constitutional government would have been a failure so great as to have carried destruction with it to all such experiments for generations to come. It seems easy now for a judge to have walked in so plain a path. But we should not forget that constitutions before that time—and since, also, except in the United States—were never supreme in any real or literal sense. Unwritten constitutions are constitutions only by fiction. In England



constitutional principles are much discussed, but no one ever claimed an act of parliament could be ignored or disregarded for a supposed or real violation of that intangible and liquid ideal called the British constitution. It seems strange to us, but yet in England an act of parliament may be unconstitutional, and still be legal and valid. In other words, the British constitution is perfect as a text, but worthless when parliament preaches the sermon. But the omnipotence of parliament is a very different thing from the acts of a legislature whose powers are circumscribed by the only omnipotent thing in our government, which is the constitution; not a list of precedent and prescriptive rights, but the deliberate will of the people set down in written words, by the only sovereign authority—the people themselves. No court in the world, outside of the United States, would presume to disregard a legislative act, on the ground that it violates the constitution of the country, written or unwritten. Coke, DeLoime, Blackstone, and the great commentators on the British constitution, give us a surfeit of the omnipotence of parliament, which, it is said,—apparently as an admission against interest,—cannot transform a man into a woman or a woman into a man, but can do anything else.

It was in this great case that we find the maxim which has come down through our judicial history, and has been asserted in many important cases, that “the government of the United States is a government of laws and not of men.”

And so the constitution has marched; and one of the greatest steps it ever took was when John Marshall gave distinct notice that it was the supreme and ultimate law against which nothing could prevail. There were men in those days—patriotic statesmen, according to their lights—who sincerely believed that the doctrine that the Supreme court could declare an act void on the ground that it violated the constitution, was an unwarranted and dangerous assumption of power. “Why should the judiciary,” they asked, “override the co-ordinate branches of the government? The president must decide for himself. Congress must decide for itself on all such questions”—which only meant

that constitutional provisions were but high-sounding phrases, signifying nothing.

The next great forward step of the constitution was *McCulloch vs. Maryland*, famous in our judicial annals, because it involved a question absolutely vital in the relations of the National government to the governments of the states. In *Marbury vs. Madison* the court had held that an act of congress repugnant to the constitution is void. Now came the question which, under our form of government was much more serious: Is a state statute which is repugnant to the federal constitution also void? Both these questions seem entirely plain and simple now, but we must remember that in the beginning the people were, as Edmund Randolph had so happily said, "in the infancy of the science of constitutions." I am inclined to think that *McCulloch vs. Maryland* was the most important and far-reaching in all Marshall's career as chief justice. It is certainly the most powerful discussion of constitutional principles in the history of the court, a classic for lawyers and for statesmen. Though there were but two questions to be decided, it is impossible for even a dull man to read the opinion without gaining a fairly correct idea of the theory of our government and its great principles. Let us recall the two questions involved:

1. Has congress power to incorporate a bank?
2. If it has, can a state tax it?

The intellect of John Marshall was a strange compound of the practical and the ideal. This is not so rare, however, as is sometimes supposed. Lincoln had it in a degree which was almost sublime. Napoleon had it; Cromwell had it, and Mansfield, according to Pope, was another Ovid, expounding the law when he might have been writing the poems of his own and of future ages.

Marshall opened his opinion by a few sentences which showed that the man was not unconscious of what the judge was about to decide. He said: "The constitution of our country, in its most interesting and vital parts, is to be considered; the conflicting powers of the government of the Union and of its members, as marked in that constitution, are to be discussed, and an opinion given which may essen-

tially influence the great operations of the government. No tribunal can approach such a question without a deep sense of its importance and of the awful responsibility involved in its decision."

The next sentence of this great judgment is pathetic in the evidence it bears how gladly he would have found some honorable way of escape, some sanctuary in which his duty would suffer him to take refuge. But there was the question, and the court of which he was chief justice could not shrink. He added, with undaunted firmness: "But it must be decided peacefully, or remain a source of hostile legislation, perhaps hostility of a still more serious nature; and if it is to be so decided, by this tribunal alone can the decision be made. On the Supreme court of the United States has the constitution of our country devolved this important duty."

It would be superfluous here to go over the decision point by point to show how unerringly he demonstrated that the government of the nation is supreme within the scope of its powers, that it may avail itself of all necessary and proper means of exercising those powers, and that neither Maryland nor any other state can interfere with, cripple or impede its lawful operations as a government. Jurists and statesmen, from that day to this, have found the opinion a treasure house of constitutional principles from which in many great emergencies they have liberally drawn.

The subject of commerce, and the commercial relations of the different states, was one of the great inducing motives that led to the adoption of the constitution. It was not the only one, and perhaps not the principal one, but it was a very powerful one. Trade and traffic, buying and selling, exchanging commodities and carrying on the extensive operations which are incident to modern civilization, were in men's minds then as they are now and will be always. Before the constitution, Maryland, Delaware and Virginia; New York, New Jersey, and Pennsylvania, wrangled and disputed over duties, restrictions and regulations calculated to advance the interests of one against the others, for selfishness has always been a largely controlling motive of human action. When the framers of the constitution inserted the



provision vesting in congress the power to regulate commerce among the several states, they stamped upon their work the indubitable evidence of practical wisdom. But what is commerce? What is regulation? These questions have followed the path of our national progress. It has not always been easy to answer them, and they have left in their wake many and unsettled and indeterminate inquiries. The present Interstate Commerce Law is an attempt to solve some of them, and is certainly a great forward step in the development of the constitution. I believe, and I think the belief is shared by the legal profession and by the business interests of the country, that the theory of the act is right, and that the time will come when the great purpose of the constitution in respect to commerce will be attained. It takes time to build up the structure of legal right upon the basis of acknowledged principles, and we must remember that successful legislation seldom precedes the acquiescence of those most largely affected by it.

Gibbons vs. Ogden, decided in 1824, is the great source to which all must go who would understand the scope and import of the commerce clause of the constitution. Again, the great chief justice had to face the pretensions of a sovereign state, and to strike down one of its statutes. There is a certain solemnity in all of Marshall's constitutional decisions; a solemnity becoming a great magistrate with such duties to perform. No judge ever had to walk in a harder path. But he never faltered and his judgments have stood every test, as the firm and convincing pronouncements of the law.

In this great case Marshall rendered a service to his country in laying down the true principle of construction, as great, perhaps greater, than in construing the commerce clause which was before the court. He vindicated the constitution as a working instrument of government. He made it, if I may say so, what in modern litigation we call "a going concern." In all Marshall's opinions I recall nothing more filled with the wisdom of the hour or more useful to the generations that were coming on, than this fine disposition of the argument that the constitution must be strictly



construed. "What do gentlemen mean," he asks, "by a strict constitution? If they contend only against that enlarged construction, which would extend words beyond their natural and obvious import, we might question the application of the term, but should not controvert the principle. If they contend for that narrow construction which, in support of some theory not to be found in the constitution, would deny to the government those powers which the words of the grant, as usually understood, import, and which are consistent with the general views and objects of the instrument; for that narrow construction, which would cripple the government, and render it unequal to the objects for which it is declared to be instituted, and to which the powers given, as fairly understood, render it competent; then we cannot perceive the propriety of this strict construction, nor adopt it as a rule by which the constitution is to be expounded."

His judicial career and his earthly career ended July 6, 1835. He had been chief justice thirty-four years, and it is only true of him to say that, "take him all in all," he was the greatest judge that ever lived. During all his long incumbency of the chief judicial office there never was a day that the constitution did not move forward, as a constitution should, to meet the crowding exigencies of human affairs.

And so the constitution marched; and without exaggeration it may be truly declared that John Marshall was its guide, its light and its defender. The profession looks upon him with a somewhat idolatrous feeling, but I do not think it is excessive. When we consider what might have been our fate if another and not he had occupied that great seat, we may well believe that Providence watched over the republic. He interpreted the constitution, but he interpreted it in the comprehensive way which made it a thing of life instead of death; a chart of government instead of a collection of meaningless phrases. Only two Americans are better entitled to the gratitude of our people—George Washington and Abraham Lincoln.

Roger B. Taney, who succeeded Marshall, was fitted for that exalted position. Learned, able, patient, honest,

he filled the ideal of a great judge. But, like Marshall, he had a temperament; like Marshall, he belonged to a school. Strict construction was as dear to him as it was odious to his predecessor. But the profession can never fail to acknowledge the services of Chief Justice Taney upon the bench, the sincerity of purpose, and steadfast devotion to his sense of duty, which always characterized him.

It cannot be said of Chief Justice Taney that he did not, in his lofty estimate of judicial duty, hold with a firm and equal hand the rights of litigants, high and low. In the License cases, he sustained the reversed powers of the states in their proper field of police regulation. In *Charles River Bridge Co. vs. Warren Bridge*, he applied his life-long principle of strict construction to grants of public franchises to private corporations. Here he found most appropriate occasion for the application of this principle, and in so doing established, as the permanent doctrine of the Supreme court, the ancient rule of the common law, that all public grants must be strictly construed against the grantee.

This doctrine has been most beneficial to the country. Denying the right of any corporation to enjoy a monopoly in an avenue of transportation and travel, he stimulated, and to a large degree made possible, that great industrial development upon which the country was then entering.

Unfortunately for a calm and entirely just estimate of his judicial career, his lot was cast in a period of angry political discussion and anxious solicitude for the fate of our institutions. As chief justice, it came to him in the order of duty to administer the oath of office to Abraham Lincoln as president of the United States. When these two men, each with a different image of our government in his mind, stood face to face on the east porch of the capitol, what strange emotions, memories and hopes crowded upon them! The venerable chief justice, bowed with the weight of years, and the sad feeling that a new and stormy period was opening before the country, could only perform the duty of his office, and silently repress his gloomy forebodings. The new president, filled with a solemn sense of the future, appealed to all his countrymen, North and South, in words which will live forever:

"We are not enemies but friends; we must not be enemies; if passion may have strained, it must not break, our bonds of affection." This sad and tender language did not conceal, and was not intended to conceal, the inflexible purpose of the man. He had already said in the same inaugural, and for four weary years he abided by it,—“I hold that, in contemplation of universal law and of the constitution, the union of these states is perpetual.” It is not too much to say that in that moment the voice of John Marshall spoke again.

I need not recount the story of the war. During that memorable conflict the courts, wherever they could, continued to exercise their ordinary jurisdiction. The three great amendments that followed the war, and which made freedom and equality organic in our law, were the logical and irresistible conclusion of that great struggle.

The fourteenth amendment, perhaps in a larger sense than its framers realized, and certainly more than the Supreme court at first recognized, is the great anchorage for the rights which essentially belong to citizenship in a free government. By the fifth amendment the people had protected these rights against arbitrary encroachments by the general government; while by the fourteenth amendment, they in like manner protected them against the arbitrary exercise of power by any of the states. Taking them together, they are to us what Magna Charta was and is to the English people; yet with this distinction, that under our system fundamental rights are not mere abstractions. Here, constitutions mean what they say; and every citizen may appeal to the courts for their vindication.

When these guaranties were thus made uniform in respect to both national and state legislation, the constitution took a forward step. And when in 1886 the Supreme court decided that these guaranties extended to every person, natural or artificial, another great advance was made.

Notwithstanding the able opinion of that great jurist, Mr. Justice Miller, in the Slaughter House cases,—and although the profession quite generally believe the main question involved, which was one of police power, was cor-



rectly decided,—the large scope of the fourteenth amendment, maintained in the dissenting opinions of Justices Field, Bradley and Swayne, and concurred in by Chief Justice Chase, has since become the established view of the court in numerous decisions. In none of them, probably, has the doctrine been more convincingly expressed than by Mr. Justice Harlan in the great case of *Smyth vs. Ames*. Speaking of the fourteenth amendment he there said:

“In view of the adjudications these principles must be regarded as settled:

“1.—A railroad corporation is a person within the meaning of the fourteenth amendment declaring that no state shall deprive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

“2.—A state enactment, or regulations made under the authority of a state enactment, establishing rates for the transportation of persons or property by railroad that will not admit of the carrier such compensation as under all circumstances is just to it and to the public, would deprive such carrier of its property without due process of law and deny to it the equal protection of the laws, and would, therefore, be repugnant to the fourteenth amendment of the constitution of the United States.

“3.—While rates for the transportation of persons and property within the limits of a state are primarily for its determination, the question whether they are so unreasonably low as to deprive the carrier of its property without such compensation as the constitution secures, and therefore without due process of law, cannot be so conclusively determined by the legislature of the state or by regulations adopted under its authority, that the matter may not become the subject of judicial inquiry.”

It has been supposed by some students of our national history that a written constitution is an inert mass of tabulated provisions. The supposition is not correct; for the national constitution, under the guidance of our great court of last resort, has grown and developed, not, perhaps, like an unwritten one, but still keeping abreast with the demands



of "progressive history." This does not mean that a written constitution grows by being violated whenever its provisions stand in the way of national progress; but it does mean that our constitution was, by the enlightened foresight of its framers, made to be an intelligent guide and chart, not a mere list of obstacles. The American people in constructing their constitutions, both national and for the states, cherished the great features of the English constitution, of which they, as well as the English, were heirs, and so their work has ever been preservative of the old, as well as creative of the new.

In the complex workings of modern civilization, large fortunes have been rapidly accumulated, and great wealth has been centered in a few hands. People naturally ask: Would a just order of social and economic relations permit this to happen? Whatever the true answer may be to this inquiry, no one acquainted with the general history of the human race, or with our own history as a nation, can doubt that the well-being of our people depends upon maintaining sacredly the equal rights guaranteed by the fifth and fourteenth amendments, to rich and poor alike. Property, because it is most easy of attack, is most frequently attacked. This is no new illustration of human nature, but is a part of the phenomena of all history.

When the Centennial Anniversary of the Supreme court was celebrated in New York, the venerable Justice Field said, with the prophetic dignity that became that solemn occasion:

"As population and wealth increase; as the inequalities in the conditions of men become more and more marked and disturbing; as the enormous aggregation of wealth possessed by some corporations excites uneasiness lest their power should become dominating in the legislation of the country, and thus encroach upon the rights or crush out the business of individuals of small means; as population in some quarters presses upon the means of subsistence, and angry menaces against order find vent in loud denunciations, it becomes more and more the imperative duty of the court to enforce with a firm hand every guaranty of the constitution. Every decision weakening their restraining power is a blow to the peace of society and to its progress and improvement. It

should never be forgotten that protection to property and to persons cannot be separated. Where property is insecure, the rights of persons are unsafe. Protection to the one goes with protection to the other; and there can be neither prosperity nor progress where either is uncertain."

In English history, as in our own, most of the great questions which mark the progress of legal rights have grown out of small property disputes. Men have invariably been more ready to engage in litigation over concrete questions than to go to law about abstract principles. The historic assertions of personal privilege which have come down to us from Hampden's day have generally risen from some slight encroachment upon the property or rights of a single individual.

It was but an injunction suit brought by the state of Texas against private individuals claiming ownership of certain United States bonds that gave us the great pronouncement upon the nature of our government; which, all things considered, is perhaps the most valuable judicial utterance ever made under our constitution. "The constitution, in all its provisions," said Chief Justice Chase, "looks to an indestructible union, composed of indestructible states."

The indestructibility of the states, when thoughtfully considered, is the great guaranty of an indestructible union. Throughout our constitutional history we have carried on the most complex system of government known to man; and to-day I venture to assert that, notwithstanding its complexity, it has been so administered as to combine more of liberty to the citizen with more of power in the nation than any other constitutional government. The states, unimpaired in their just powers, carry on the due operations of local administration unfettered; and the union—which is a union both of people and of states—has long since passed the time when any court or any statesman may renew Justice Wilson's inquiry:—"Do THE PEOPLE of the UNITED STATES form a NATION?"

# THE AMERICAN SYSTEM OF SUPREME COURTS AND WHAT IT ACCOMPLISHES.

BY SIMEON E. BALDWIN.

[Simeon E. Baldwin, judge of Supreme Court of Errors of Connecticut; born February 5, 1840, New Haven, Conn.; educated at Yale and received the degrees of A.M. and LL.D. from Harvard; lawyer in New Haven until appointed judge; professor of constitutional law at Yale; author of Connecticut Digest, Cases on Railroad Law, Modern Political Institutions, as co-author, and in 1901, of Two Centuries' Growth of American Law.] Copyright 1901 by Frederick A. Richardson

There can be no efficient government without a supreme authority somewhere, ready to show its hand and to enforce its will upon any emergency. In England this is vested in parliament, in Russia in the czar, in the United States in the courts of justice.

As soon as American independence was accomplished, every state except Georgia made haste to set up a Supreme court of its own. In earlier days there could be an appeal from colonial judgments to the king in council. Now the last word in any controversy was to be said by the highest court of the new state.

When we adopted a system of government under written constitutions, such tribunals, under American ideas of the nature of law, became a practical necessity. To make that a really effectual and working scheme, there must be some final authority provided to determine whatever claims may be set up, from time to time, as to conflicts between constitutions and statutes, or between constitutions and executive or judicial proceedings.

A written constitution is good for nothing without somebody to guard it. Magna Charta would have had but a short life, had there been no barons of England to hold on to what they had got by the strong hand. Government, whatever its appointed form, soon becomes what the administrative authority sees fit to make it, unless there be some superior power to hold it in place.

The American constitutions all proceed from the people. They are the ultimate source of all political power. They must exercise this power through a few of their number, selected and commissioned for the purpose. Our plan has been to divide it up, as far as possible, between three great departments of government, in the belief that it will be thus best and most safely administered;—best because to each set of officers will be given work they are specially fitted to do; most safely, because each set will be a check upon the others.

The check in the hands of the executive is that he may decline to execute laws or judgments which he deems wrong. The check in the hands of the legislature is that it can, to a large extent, circumscribe by statute the authority of the other departments, and refuse to appropriate money for purposes which it does not approve. The check in the hands of the judiciary is that it can declare what is the legal effect of any act or omission on the part of the executive or the legislature.

But the courts have this advantage over the rest. They are empowered to decide, and to decide finally, all matters of controversy, whether political or not, between man and man. To do so, they must apply and, if it need interpretation, interpret the law. Whether it be statute law or customary law, this is equally true: every lawsuit is brought to get the benefit of the law applicable to certain facts. It is for the courts to say what the facts are, if they are in dispute, and what the law is, if that be in dispute.

It is desirable that such determinations be so manifestly right and just as to command general assent. But this is, after all, a matter of secondary importance. Roger Sherman, when in his younger days living in New Milford as a country lawyer and magistrate, was approached by a neighbor with this question, "Squire Sherman, are most lawsuits settled right or wrong?" "That," was the reply, "isn't the point. They are settled."

In the words of one of our courts of last resort, "Every lawsuit looks to two results: to end a controversy, and to end it justly; and in the administration of human government the first is almost as important as the last."



The United States, under the Articles of confederation, organized a supreme tribunal to pass upon Prize cases, because these, in case of an alleged capture, may naturally lead to difficulty with a foreign power. They also set up, with indifferent success, a special court of commissioners to adjust controversies between the different states. But the original confederacy of states was doomed from the first to speedy dissolution. It had not anywhere that supreme authority which, as has been said, is essential to efficient government. It was a mere league of equal sovereigns. A war could hold it together by the pressure of necessity. Peace no sooner came than it began to drop apart of its own weight.

The men who framed the present constitution for the United States had it for their purpose to replace this worn-out confederacy, which was then all that made them united, by something better adapted to that end.

In the opening days of the constitutional convention of 1787, it was voted that a national executive, a national legislature, and a national judiciary were each and all necessary to make the union secure. On this platform they built.

The confederation had a congress but no executive head, and no general judicial establishment. The high court of appeals, which has been mentioned, created to pass in the last resort upon cases of maritime prize, had no jurisdiction over the ordinary subjects of litigation. The new United States of America, as they reconstituted them, were to have a single executive with almost royal powers. The laws that he was to execute were to come from a legislature able to deal with all matters of national concern, which represented the states in one of its branches, and the people of the United States in the other. But as authority to make these laws was to be derived wholly from the constitution, and was given in that instrument in the shape of a number of specific grants, which were not to be exceeded, it is obvious that unless every act of congress was to be obeyed without question, however it might transcend the limits so appointed, there must be some right of appeal, either to the executive or to the judiciary or to both.

One of the devices suggested in the Constitutional convention was that the president and a certain number of the judges should have a qualified veto power as to any bill passed either by congress or a state legislature. This came from Governor Randolph of Virginia, and was vigorously supported by Madison, Ellsworth, and Wilson. Another proposition made by Hamilton, which found less favor, was that the president should have an absolute veto as to all congressional legislation, and that the United States should name the governor of each state, with the same powers over the state legislature.

It is fortunate that neither of these suggestions was approved by the convention. An absolute veto by the executive would have been as intolerable here as it has proved to be in Great Britain. Any interposition by the judges, to prevent the passage of a bill, would have thrown them into an active participation in politics, and tended to impair popular confidence in the bench. The judicial function is to hear those affected by a judgment before pronouncing it. Under Randolph's plan the courts would have prejudged every case turning upon the validity of an act of congress.

The convention acted wisely in following here, as in so many other matters, the practice already established in the states. Questions of constitutional construction were left precisely on the same footing as any other. If it became necessary to decide them, in order to do justice between the parties to a lawsuit, the courts were free to exercise the judicial function in the ordinary way. A constitution was a written document. The construction of all written documents, if in dispute, must be settled by the judges before whom the dispute may come. It cannot be left to a jury of twelve. Not only might there be twelve opinions as to the true meaning; not only would they be the opinions of untrained minds, unaccustomed to deal with difficulties of this nature, but that which one jury decided would be no rule for the next, in another case involving the same point. What judges decide becomes a precedent to be followed.

The Supreme courts of the states had been construing their charters or constitutions for years. New Jersey led

off with such a decision as early as 1780. The people had acquiesced in their exercise of this jurisdiction. Those who stood pre-eminently for popular rights and state rights, like Jefferson and Gerry, looked on it as established, if not necessary.

X The Supreme court of the United States, at the outset, had some advantages for the sound disposition of constitutional questions not possessed by that of the present day. It was not so unwieldy. As originally constituted, it consisted of six justices. The number has gradually grown to nine. At first, the justices spent most of their time in hearing causes in the Circuit courts. Four constituted a quorum in the Supreme court, and more than five were seldom present.

The smaller the number upon the bench of a court of last resort, the greater necessarily will be the sense of personal responsibility resting upon each of them. In a court of nine, from which it is rare that any member is absent, there is less weight upon the shoulders of each. When a case is argued, there is not one chance in five, but only one in nine, that it will fall to the lot of any particular member to write the opinion. There is, therefore, less motive to listen closely to what is said at the bar.

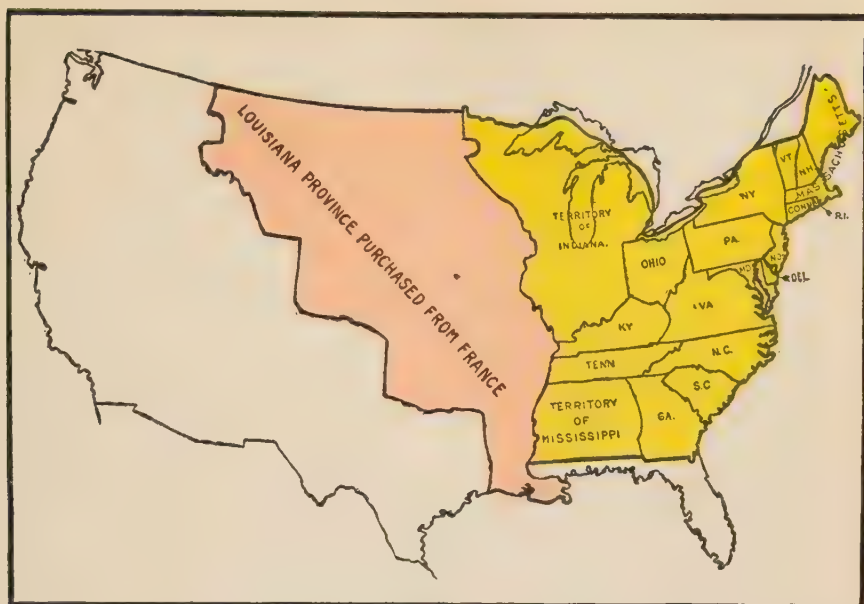
In the consultation room, there is a less close contact between the minds of the judges than results when they are fewer. They do not know each other's lines of thought so well. There is more of an opportunity for unsound theories to be suggested. The weakest among nine is apt to be inferior to the weakest among five. The best lawyers who will accept such a place ought to be selected for it. Presumably they are, and between the five best, and the four next, there is a serious and increasing difference.

The court was never overburdened with its work during the first twenty years of its existence. There were very few classes of cases which could be brought before it otherwise than on appeal. Foreign ministers could have come there for protection, but none did. States could, as the constitution originally stood, sue or be sued there; but there were not half a dozen actions of that nature. Only one jury trial was ever claimed before it.









NO. 7.—1803. LOUISIANA PURCHASE ADDED TO THE TERRITORY OF THE UNITED STATES, MORE THAN DOUBLING THE LAND AREA.



NO. 8.—1804. TERRITORY OF ORLEANS FORMED FROM SOUTHERN PART OF THE LOUISIANA PURCHASE AND THE REMAINDER DESIGNATED AS LOUISIANA DISTRICT.



Nor could there be any considerable demand for the exercise of its appellate functions, until there had been time to bring cases in the inferior courts of the United States and to dispose of them by final judgments. There was, therefore, ample time to consider every cause carefully and to express the decision in apt words and good form. Marshall's great opinions smell of the lamp. They were polished and re-polished. As specimens of English style, they may rank with anything from the pen of Burke or Mansfield. Now, and for forty years, the pressure of an accumulation of cases often deprives the justices of the power of giving the time to the preparation of their opinions which is necessary to produce the best results.

The term of office of a judge of a court of last resort is always relatively a long one. Petty courts may be manned and remanned every year without great loss, but to give a Supreme court its proper weight and dignity a certain permanence of tenure is indispensable. This is gained partly by appointments or elections for long terms, partly by the natural disposition to reappoint or re-elect one who has done well, and partly by the continuity of corporate existence which is incident to such a body. It will ordinarily contain some members who have served for many years. They will probably constitute the majority. Like the senate of the United States, the American Supreme court is apt to represent the point of view of a former period. This gives stability of decision.

It may also put a Supreme court representing one shade of political opinion by the side of an executive or a legislature representing another shade. This will become of especial importance if the chief justice is a man of power. The head of such a tribunal is in a position of commanding influence. He is the spokesman of his fellows. If he is able to lead them, he will lead them.

The Supreme court of the United States was a rock against which the wave of political reaction which swept John Adams into retirement and made Jefferson president dashed in vain. Its members had all been appointed by Washington or Adams. Most of the original justices had



been active in promoting the adoption of the constitution. But it was not till the advent of Chief Justice Marshall that it emerged into its commanding position. He was its leading spirit; not so much because of his official headship as by his dominating force of opinion. Story had been a republican leader, and was appointed to the bench by a republican president, but he became from the first a supporter of Marshall's constitutional doctrines.

Jefferson lived for a quarter of a century after the fall of the federal party, but he did not live to see the Supreme court, wholly remanned though it had been during the period, save for its chief, take any view of the constitution that the federalists had not supported. In 1826, Dr. Thomas Cooper of South Carolina, one of the most pronounced republicans of the day, wrote of it to a political friend, "They are all ultra federalists but W. Johnson, and he is a conceited man, without talents." Mr. Justice Johnson, who is thus disparagingly mentioned, was then the only survivor of three justices appointed by Jefferson.

Among the chief justices of the states who have led their courts in a similar way may be mentioned Kent of New York, Parsons and Shaw of Massachusetts, Gibson of Pennsylvania, and Bleckley of Georgia.

The number of judges constituting the Supreme court is ordinarily left by our constitutions to the discretion of the legislature. Five is that most common, except in the larger states. It is probably, wherever practicable, the best. In a court of three (such as that of the federal Circuit court of Appeals), any dissent can come from only one man. This deprives it of much of what is really its due weight. In a court of five, where two may join in a dissenting opinion, it will carry much more force, and deservedly so. "Two heads are better than one."

It is, however, impracticable, under our American system, so to limit the number in the Supreme courts of the larger states or of the United States. Public sentiment and custom require here, as they do not in England, a formal written opinion for publication by the official reporter, in every case presenting questions of any general interest. Few judges can

prepare, outside of court hours, more than forty or fifty such opinions in a year, of a kind meriting the perpetual preservation which is guaranteed by the law reports. The more cases there are to be heard before them the less time can be spent upon the judgment. Consequently, in the great States, or those in which all cases, great and small, can be reviewed on appeal, without limit, it is generally found necessary to have a court of seven or more. Even with that, the judges not seldom are forced to content themselves with simply affirming, without further discussion, the opinion pronounced in the inferior court.

Occasionally, but rarely, the number of judges is lessened or increased to affect the action of the court in some matter of political importance. This is a power in the hands of the legislature which ought to be used only in the most extreme emergency. It is like the right of the British crown to pack the house of lords by a new creation of peers, in order to carry or defeat a particular measure. That such a prerogative exists tends to keep parliament on an even keel; but to exercise it, or to threaten to exercise it, even in such a case as was presented by the Reform Bill of 1832, is justly regarded as a thing of the most serious moment.

What now have our Supreme courts done for us?

It is said that we live "under a government of laws, not men." Yet every government is one of men,—of men above law, or of men behind law. Our American system of administration is one of men behind law, and, in the last resort, it is one of the few members of the Supreme court of the particular jurisdiction. They must say what the law is; and what they say they can enforce.

A court is not complete without a clerk and a sheriff. The clerk records its judgments, and the sheriff executes them.

The sheriff is but one man, yet there is no force strong enough to resist him. Why? Because he can summon every able-bodied man in the community to his assistance, in case of necessity, and they are bound to obey.

But how is it if the sentiment of the people is against the judgment of the court, and they refuse the assistance which they ought to render? In such a case, an appeal can generally

be made to the executive for military support, and soldiers can be sent from a distance, and so unaffected by the feeling of the locality, to the sheriff's aid.

There are acts of congress to this effect, under which the president has occasionally interfered, and always decisively.

If, however, the executive sympathizes with the feeling of the community, in opposition to the execution of the judgment of the court, the court may be compelled, for the time, to yield.

In the controversies in Georgia, early in the last century, between the state and Northern missionaries of religion who went there to teach the Indians, and were looked on with suspicion in view of their relations with the slaves, the efforts of the Supreme court of the United States to do justice were thus thwarted by the action or non-action of the president.

This is one of the necessary evils of a system of checks and balances; but the possibility of its manifestation is not without its benefits. It tends to keep the judiciary within due bounds in a doubtful case. Nor are they helpless in the end. The temporary feeling of popular excitement will pass away. The executive office will pass into new hands. Meanwhile, if illegal acts have been done, in disobedience to the mandate of the court, whoever may be injured by them can bring his action for reparation. Lawsuits move slowly, but the end is sure. There is always the same Supreme court, and to it an appeal can always be taken.

The American system of Supreme courts, investing one tribunal with the right to reverse the judgments of all others, has also given to every man a reasonable and increasing certainty in respect to his rights and obligations, under any and all circumstances.

This is due to our law reports. For more than a hundred years, the judicial opinions of our highest appellate tribunals have been reduced to writing by the judges themselves, and published for common information. During most of this period the publication has been made officially, and at public expense. No other people has ever done this. It has given

us a mass of legal precedent, and it belongs to our system of jurisprudence that—

“Freedom broadens slowly down  
From precedent to precedent.”

It is not merely political freedom that thus grows. It is freedom also from unjust interference with personal rights, in the ordinary relations of private life, between man and man.

These law reports are interwoven with American history. They constitute no small part of it. Such opinions as those of Chief Justice Marshall as to the right of congress to charter banks, or to make commerce between two states free from the control of either of them; of Chief Justice Taney, before the Civil war, in the “Dred Scott Case”; of Chief Justice Chase, after the Civil war, that the United States is an indestructible union composed of indestructible states; and of the various justices in the recent “Insular cases,” are great historical events. They are true state papers.

But the reported decisions of our state courts are still more important as a record of the history of American society. The political relations of men are far less complex and far less important than their private relations. The object of creating or suffering political relations is to secure proper private relations. The mutual rights and obligations which, from time to time, govern the daily life of men in civilized society must depend largely on the application of sound reason to changing circumstances. This is the work of the courts, and the law reports explain it for the public benefit.

A complete code of civil rights would be better, if it were a possibility. But the fullest code calls for interpretation, and demands it more and more as the years roll on and conditions change. What code of fifty years ago, for instance, could provide for the use of the telephone in the negotiation of contracts, or as an instrument of evidence in court?

When the Roman law was codified under Justinian, every attempt was made to keep it as the only source of authority. Lawyers were forbidden to cite the original works from which it was compiled. Commentaries were absolutely prohibited. All was, of course, in vain. It was a collection of signs, that



is, of words used to express thoughts and precepts. What thoughts and what precepts? This inevitably, in many cases, would be a matter of controversy. The magistrate must settle the dispute, and to do this justly he must have all the light to be got from argument and treatise.

Precisely because of this impossibility of making word signs convey exactly the same meaning to all men under all circumstances, the power of our Supreme courts to declare the law, when used in the interpretation of statutory and constitutional provisions, has been not infrequently pushed beyond due bounds.

The executive and the legislative officers are sworn to support the constitution, as fully as are the judges. It is to be presumed that in their official acts they mean to support it. Only in a clear case should it be held by the courts that they have failed in this purpose.

It is always a misfortune when a statute is judicially pronounced unconstitutional and void by anything less than a unanimous court. A dissenting opinion, under ordinary circumstances, is almost a demonstration that the statute may fairly be held to be consistent with the constitution.

At the national democratic convention, held in 1896 for the nomination of a president, one of the Kansas delegates advocated the insertion in the party platform of the following declaration:—

“Our theory of government is, in the main, averse to the decision of one, but relies with confidence upon the voice of the whole. From very necessity, the judicial branch of the government must, in matters of constitutional right, become the final arbiter, and to the end that its determination shall have that highest confidence and respect, as being the determination practically of the whole, rather than of one, we would commend to the thoughtful and patriotic consideration of our country, the advisability of the following Amendment to our national constitution:—

“That before any Act of congress which shall have been regularly enacted according to the general forms provided for the enactment of laws by congress, and duly approved by the president as the representative of the executive branch of

the nation, shall be held void by the judicial department of the government as being in conflict with the constitution, such decision shall be the concurrent opinion of seven (7) judges of the Supreme court."

This was rejected, and probably wisely. Any numerical rule of decision tends to substitute quantity for quality. The proposition, however, voices a general feeling that this great power vested in the judiciary should be exercised with caution, and is open to abuse.

Nor is it to be denied that it often reflects the popular and even the political feeling of the day, or of the former day in which the judges giving the decision were appointed. This, however, is not an unmixed evil. Theory may be perfect; practice is imperfect. The best government, as Solon said, is the best which the people subject to it will endure. Authority may be too rigid; it may be strained till it snaps.

This atmospheric influence of the judicial surroundings increases with the public interest in the questions to be determined. No bad illustration of it was furnished by the "Dred Scott Case" in 1856. Almost every great public measure in those days was considered in congress and out of it largely in view of its relations to slavery. Did it tend to strengthen the hold of that institution upon the nation? Then the South was for it, and the North was divided. Of those who were then upon the Supreme court of the United States, the chief justice and four of his associates were from Southern States. All five, with one of the justices from the North, stood for the doctrine that the Missouri Compromise was unconstitutional and void. It purported, they said, to dictate to the people of the United States what should be the character of their local institutions, and this was outside the powers with which congress had been invested, and never within the view of those who framed the constitution.

"I look in vain," said one of the strongest of the associate justices, Campbell of Louisiana, "among the discussions of the time, for the assertion of a supreme sovereignty for congress over the territory then belonging to the United States, or that they might thereafter acquire. I seek in vain for an annunciation that a consolidated power had been inaugurated,

whose subject comprehended an empire, and which had no restriction but the discretion of congress. This disturbing element of the union entirely escaped the apprehensive provisions of Samuel Adams, George Clinton, Luther Martin, and Patrick Henry, and in respect to dangers from power vested in a central government over distant settlements, colonies, or provinces, their instincts were always alive. Not a word escaped them to warn their countrymen that here was a power to threaten the landmarks of this federative union, and with them the safeguards of popular and constitutional liberty; or that under this article there might be introduced, on our soil, a single government over a vast extent of country,—a government foreign to the persons over whom it might be exercised, and capable of binding those not represented, by statutes, in all cases whatever.”

Of the three others, one waived this question, and two upheld the validity of the act.

The discussion probably spoke the almost unanimous opinion of the South, and what also had been that of half the North up to the date of the troubles in Kansas, which brought the cry of “squatter sovereignty” so prominently into politics.

Fifty years pass, and in the “Insular cases” a similar question divides the court again. There is now no great all-controlling party force like that furnished by the institution of slavery. The country is nearly equally divided in opinion as to the extent of congressional authority over our new possessions. The court was nearly equally divided. The chief justice and three of his associates held that it must be exercised in subordination to certain express provisions of the constitution. The majority of the justices took a different view, though they were not agreed as to the reasons for the judgment. Neither is the country agreed. The opportunism of the court was the opportunism of the people; disposed on the whole not to disapprove what has been done by a government struggling with a new and difficult situation, and more interested in the “condition” than in the “theory.”

X The American Supreme court is an American invention.

It could only exist in a republican government under a written constitution, and among a people with high concep-

tions of the sanctity and inviolability of fundamental institutions.

Its peculiarity lies in the absolute grant to the judiciary of power to pronounce any act of the executive or of the legislature void, because contrary to the supreme law of the land.

Powers somewhat similar had been held by the highest tribunals of other nations; but these tribunals were not purely judicial, or if judicial, their decree was not absolutely final.

The French parliaments anciently passed their judgments on matters of state, but if they refused registration to a royal ordinance, they did so as a parliamentary body. When the constitutional era set in, the judicial power was more strictly limited, and no court for a hundred years has had the right to declare a statute void.

The Swiss confederation has its federal tribunal, but it is bound to accept and enforce whatever statutes the federal assembly may enact, however they may seem to conflict with the articles of confederation. It is the same in each canton. The cantonal laws cannot be rejected by any court.

Bluntschli, in his "Allgemeines Staatsrecht," asserts that this is true of all Europe. The imperial tribunal of Germany emphatically affirmed this position in 1883. A Bremen court had ventured to apply the American doctrine, in holding a local ordinance void, because an unconstitutional interference with vested rights. This decision was reversed on appeal. The constitutional provision (that well-acquired rights must not be injured) which was invoked, is to be understood, said the imperial tribunal, only as a rule for legislative power itself to interpret. The judiciary could not differ from its view.

In Great Britain, the "law lords" have come by practice and rule to constitute what in that kingdom comes nearest to the American idea of a Supreme court. But until recent years every peer was entitled to sit in the house while it was engaged in judicial business. The court is still the house of lords. It is an ultimate court of appeal for the British islands, and the king in council (or "the judicial committee of the



privy council") for the outlying dominions of the crown. One of these tribunals is essentially a legislative body, and the other essentially an administrative body.

The English model was at first followed in a few of the American states. The highest court of New York was composed of a mixture of senators and judges. The highest court of New Jersey still consists of a mixture of regular judges with judges who have not or may not have been educated in law. But the judgment of the American people has pronounced itself against such attempts to dilute the judiciary. New Jersey alone clings to it, but in practice her eight lay judges are now generally appointed from the bar.

It has been the easier to maintain this feature of American government because the states, as such, have no foreign relations. If they come into controversy with each other, the Supreme court of the United States is an appointed arbiter. With a foreign power they cannot have any question of difference.

To the United States it has often brought serious embarrassment.

In no other sovereign government is the decision of Prize cases so fully a matter of judicial decision. Elsewhere the executive has its say. It is either represented on the court or it has some power to review the judgment.

In no other government is the foreign office so powerless to control judicial proceedings by which foreign relations are affected.

This is partly due to the limited jurisdiction of the federal courts.

A massacre of Italians occurs in Louisiana or of Chinese in Wyoming. Their sovereign demands redress. The president is obliged to respond that it can only be sought in the local state tribunals, although he may know well that it would probably be sought in vain. Practically, in such cases, we make pecuniary reparation from the national treasury, and acknowledge regretfully our incompetence to do more. Our presidents have repeatedly and justly urged upon congress legislation to bring criminal proceedings in such cases out of the exclusive jurisdiction of the state, and into the grasp

of the courts of the United States, but thus far with no success. If we were a weaker nation, the continuance of such a state of things would be impossible. It did bring us once to the brink of war with Great Britain, in the case of Alexander McLeod. Congress then grudgingly gave a certain measure of relief; but it has proved quite inadequate.

But the courts of the United States themselves are so independent of the executive, that however much their judgments may jeopardize our foreign interests, the president cannot (except by an extra-constitutional act) control their execution. The British ministry is directly represented in the court of last resort before which causes of international importance may be brought. The Chancellor presides over its deliberations. The Supreme court of the United States is a body purely judicial. It has no right to act upon notions of state policy. Its office is only to declare the law.

Practical politics, however, has done something towards bringing the executive and the court into friendly touch, in matters of diplomatic interest, and judicial comity has done more.

Our early chief justices, Jay and Ellsworth, were sent abroad on foreign missions. In recent times, the court has been repeatedly drawn upon for members of international arbitration tribunals. But, more than this, the English precedent has been followed of informal communication, pending the decision of a cause, between the court and the state department, when information is wanted which the hearing did not bring out; and it is the settled rule that the construction of a treaty adopted by the executive will be followed by the judges, unless it be plainly contrary to what is called for by the established principles of documentary interpretation.

A conspicuous proof of the high estimation in which our American system of Supreme courts is held by foreign observers appears in an incident in the recent Behring Sea sealing controversy between our government and Canada.

One of our admiralty courts had condemned a Canadian vessel to be sold for breach of our fishing laws. She had been seized by one of our cruisers at sea, some sixty miles from the coast of Alaska. Great Britain had taken the position that

our jurisdiction for such purposes did not extend beyond the three-mile limit. If so, the condemnation was a violation of her rights. Diplomatic negotiation had failed to bring the two nations to a common understanding. In this state of things, the attorney general of Canada, acting, as he announced, "with the knowledge and approval of the imperial government of Great Britain," appeared by counsel before the Supreme court of the United States, and asked for a writ prohibiting the admiralty court of Alaska from enforcing its decision.

For a technical reason the writ was denied; but that it was asked for showed the willingness of a great power to submit to the Supreme court of another a disputed question of fact and law, in the conviction that it would be justly and impartially answered.

# THE LAWYER'S PLACE IN AMERICAN LIFE.

BY FRANCIS M. BURDICK.

[Francis M. Burdick, Dwight professor of law in Columbia university; born August 1, 1845; graduated from Hamilton college, 1869; lawyer in Utica, N. Y., 1872-83; professor of law and history of Hamilton college, 1882-87; professor of law in Cornell university, 1887-91; mayor of Utica, 1882-83, and in 1889 United States assay commissioner; author of Cases on Torts, Law of Sales, Law of Partnership, Cases on Sales, The Essentials of Business Law and other writings on kindred topics.]

It is not inappropriate to discover, if we can, the opinion which the world entertains of the legal profession, and to consider its accuracy. That this opinion has often taken an uncomplimentary form must be admitted.

One of the earliest expressions of this character, which has fallen under my notice, is that of Richard De Bury, Bishop of Durham, and Lord Chancellor of England, under Edward III. His views, set forth in the rather crabbed Latin of the fourteenth century, has been rendered into English as follows:

"Lawyers indulge more in protracting litigation than in peace, and quote the law, not according to the intention of the legislator, but violently twist his words to the purpose of their own machinations."

Such criticism from a lord chancellor would seem, at first glance, to be entitled to serious consideration. It is to be remembered, however, that the English chancellor of that far away time was not a lawyer, but an ecclesiastic; and Bishop De Bury's translator notes that the church and the bar were not on good terms in those days. This was due to the fact, he tells us, that lawyers were often obliged to defend themselves and others against the rapacity of ecclesiastics.

A more violent antipathy to the profession is attributed by Shakespeare to Dick the Butcher, in Henry VI., where he proposes to Jack Cade that the first thing they shall do, upon Cade's becoming king, is to kill all the lawyers. To which Cade responds, "Nay, and that I mean to do." But these



two worthies are represented by the great dramatist as arrant anarchists. All the realm was to be in common, declared Jack Cade, and to drink small beer, after he became king, was to be made a felony. Naturally statesmen of such a stripe would hate lawyers.

Similar hostility has been evinced by great despots. The anecdote is told of Peter the Great, that on a visit to Westminster Hall, he was astonished by the imposing array of barristers and attorneys; and declared that he had had but two lawyers in all his realm, and one of them he had put to death. Napoleon, at St. Helena, characterized lawsuits as an absolute leprosy; a social cancer; and stigmatized lawyers as a class living upon the quarrels of others, and even stirring up disputes to promote their own interests. He virtually admitted, however, that he had not the courage of his convictions, while emperor, or he had not reached the point where he thought it wise to put into operation his plan for starving lawyers, by legislating that they should never receive fees, except when they gained causes.

But, perhaps, the most picturesque indictment of the profession is that found in Macaulay's radical war song of 1820:

“Down with your Baileys and your Bests,  
Your Giffords and your Gurneys:  
We'll clear the island of the pests,  
Which mortals name attorneys.”

That these English radicals were not the sanest of thinkers, however, is apparent from the next stanza of the song, which runs as follows:

“Down with your Sheriffs and your Mayors,  
Your Registrars and Proctors.  
We'll live without the lawyer's cares  
And die without the Doctor's.”

If these were the only criticisms upon the profession, we might dismiss them with the homely proverb,

“No man e'er felt the halter draw  
With good opinion of the law;”

or, we might add, of lawyers. But we are forced to admit that the profession rests under other and more serious reproaches. Sir Thomas More gave voice to one of the most severe as well as one of the most specious of this sort, in his account of the imaginary institutions of Utopia. Lawyers were excluded from that fabled commonwealth, he assures us, because they were looked upon, as a class, whose profession it is to disguise matters as well as to arrest laws. Therefore, the dwellers in that isle of fancy thought it much better that every man should plead his own cause and trust it to the judge, than to employ professional counsel, as the client does in other lands. By this means, we are told, "they both cut off many delays and find out the truth more certainly."

This phantasy of every man his own lawyer; of a judiciary so honest, so astute to detect the truth, so capable of discovering the real principle involved in every litigation, that the public and rival presentation of the opposite sides by skilled lawyers, is not only unnecessary, but positively baneful, has enjoyed a great but underserved popularity. Several of our colonies were captivated by it, and their early legislation has the true utopian ring. Virginia, in 1645, undertook to discourage lawyers by forbidding them to take fees. Massachusetts showed her distrust of the profession, in 1663, by excluding lawyers from membership in the "Great and General Court" of the province. The fundamental constitution of the Carolinas declared it a base and vile thing to plead for money or reward. It prohibited anyone but a near kinsman to plead another's cause, until he had taken an oath in open court, that he had not directly or indirectly bargained for money or other reward, with the party for whose cause he was to plead.

The result of this colonial legislation was quite different from that anticipated by its utopian sponsors. It is admirably caricatured by Irving in Knickerbocker's New York. The redoubtable governor, Wouter Van Twiller, is the central figure of the picture—the judge before whom each party pleads his own case and to whose enlightened sense of justice the decision is committed. An important burgher of primitive New Amsterdam explains to the governor that a fellow-

burgher, though largely indebted, refuses to come to a settlement. The governor and magistrate (for the judiciary had not yet been separated from the executive) "called unto him his constable, and pulling out of his breeches pocket a huge jackknife, dispatched it after the defendant as a summons, accompanied by his tobacco box as a warrant." Brought into court by this summary, if primitive process, each party produced his books of account, plead his own cause, and, as we have said, trusted to the judge in true utopian fashion. The sage Van Twiller "took the books, one after the other, and having poised them in his hands, and attentively counted over the leaves, fell straightway into a very great doubt, and smoked for half an hour, without saying a word. At length, laying his finger beside his nose and shutting his eyes for a moment, with the air of a man who has just caught a subtle idea by the tail, he slowly took his pipe from his mouth, puffed forth a column of tobacco smoke, and, with marvelous gravity and solemnity, pronounced his judgment. Having carefully counted over the leaves and weighed the books, it was found that one was just as thick and heavy as the other. Therefore, it was the final opinion of the court that the accounts were equally balanced; that the parties should exchange receipts and the constable should pay the costs."

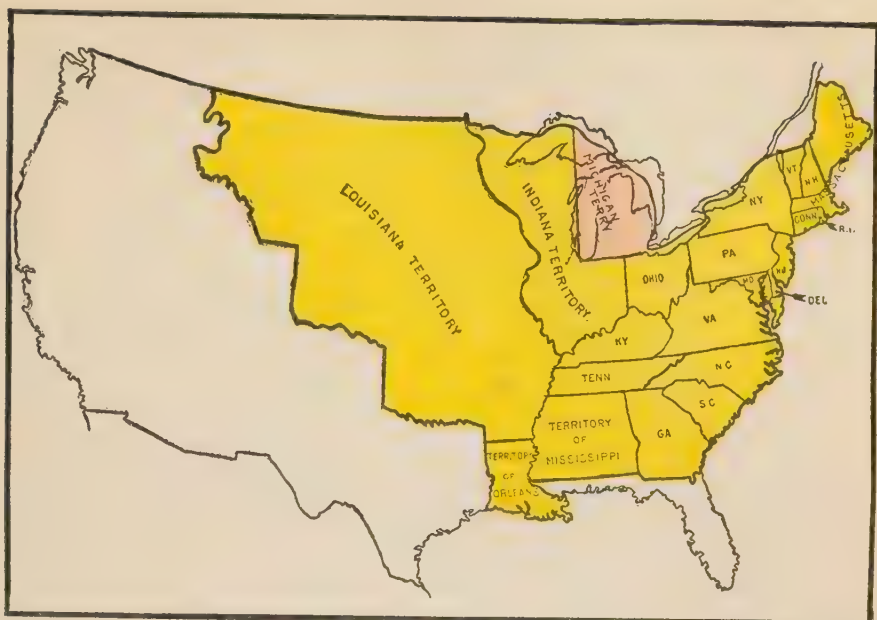
Although the veracious historian assures us that the decision diffused general joy throughout New Amsterdam, and that not another lawsuit took place during the whole of Governor Van Twiller's administration, while the office of constable fell into such decay that there was not one of those losel scouts known in the province for many years, this utopian state of things was not permanent, either in New Amsterdam or in the other provinces.

We have seen that the fundamental constitution of the Carolinas sought to prevent the growth of the legal profession, by prohibiting its members from rendering services for money or other reward. The charter was abundantly successful in this direction. Scarcely a lawyer of reputation made his appearance in these provinces while it was in force. But in every other respect it was an abject failure. Although the joint product of the Earl of Shaftesbury and John Locke, one

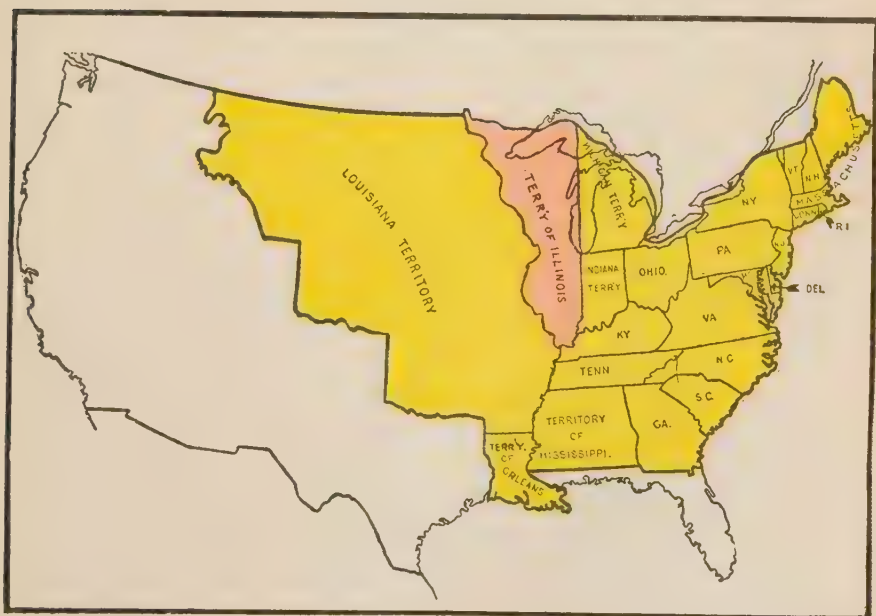








NO. 9.—1805. MICHIGAN TERRITORY FORMED FROM NORTHEASTERN PART OF INDIANA TERRITORY.



NO. 10.—1809. INDIANA TERRITORY DIVIDED AND WESTERN PORTION CALLED ILLINOIS TERRITORY.



“the first practical politician” and the other “the first philosopher of England,” at that time, it has been characterized by all historians as a simple absurdity. The political system which it set up was clumsy, complicated and fantastic. It imposed upon a primitive community a body of laws devised by a practical politician and a philosophical thinker. So nearly perfect did their authors deem them, that all comments upon, or expositions of them were forbidden. The evolution of a legal system through private lawsuits was made impossible. It professed to be framed for eternal duration; and it collapsed within a quarter of a century. While it endured, its fruits were turbulence, faction and failure. Scarcely had it been launched, before a leading colonist besought the proprietaries to send over “an able counsellor to end controversies and to put the settlers in the right way of managing the colony.” Upon its overthrow, lawyers began to multiply in the Carolinas. A simple and rude, but effective government grew up, and a legal system was developed, under which criminals were brought to punishment, life and property were reasonably secure and productive industry flourished. A more instructive object lesson in the evolution of law never has been afforded, than by this experiment of Locke and Shaftesbury. A body of legal rules, in order to be really serviceable to a community, must be of home growth. No statesman has ever been practical enough, no philosopher wise enough, to evolve from his inner consciousness a successful code. The English common law is far from perfect, either in the mother country or in this progressive republic; but it is alive with the spirit of justice; it quickly responds to the best moral sense of the people and its general tendency has ever been toward the truth. This is due very largely to the active and influential part taken by the bar of England and of America in the development of our legal system.

During the latter part of the seventeenth and the early part of the eighteenth century a change in the popular estimate of lawyers had taken place, not only in the Carolinas, but also in Virginia, in New York and throughout New England. Massachusetts no longer excluded them from membership in her great and general court. The governor of New



York could no longer dispose of lawsuits in the Van Twiller style. When Governor Cosby, in 1732, secured the indictment of Peter Zenger, the publisher of the *New York Weekly*, for criminal libel, the accused did not try the utopian experiment of pleading his own case, and trusting it to the judge. On the other hand, he secured the services of the foremost lawyer of the colonies to combat the view then generally entertained by the judiciary, that the only function of the jury, in a trial for criminal libel, was to say whether the libel had been published or not. In Zenger's behalf, Andrew Hamilton, the leader of the Pennsylvania bar, eloquently contended that truth was a justification if the words of the libel were not scandalous or seditious. He won his case. Zenger was acquitted. Hamilton, we are told, was presented with the freedom of New York city and departed for his Philadelphia home amid the firing of salutes in his honor. It was an honor well deserved, for he had won the first fight for the freedom of the press in America, thus anticipating by nearly half a century, the great victory of Erskine and Fox for the freedom of the press in England.

So radical was the change in public sentiment towards law and lawyers, that Burke, in his great speech on Conciliation, named as one of the six capital sources of the fierce spirit of liberty among the colonists, the widespread taste for legal education.

"In no country in the world," said he, "is the law so general a study. The profession itself is numerous and powerful, and in most provinces it takes the lead. The greater number of the deputies sent to congress were lawyers." General Gage had reported he observed that all the people in his government were lawyers or smatterers in law, and that in Boston they had been enabled by successful chicane wholly to evade many parts of the most important penal laws of Parliament. This study of the law, added the philosophic statesman, "renders men acute, inquisitive, dexterous, prompt in attack, ready in defence, full of resources. In other countries, the people, more simple and of a less mercurial cast, judge of an ill principle in government only by an actual grievance; here they anticipate the evil, and judge of the

pressure of the grievance by the badness of the principle. They augur misgovernment at a distance and snuff the approach of tyranny in every tainted breeze."

It was not strange that the American colonists had ceased to look upon lawyers with suspicion, and had come to follow them as leaders. The questions of vital importance now were legal questions. Were the colonists taxable by a government in which they had no representation? Were their persons and property seizable under general warrants? Could the legality of an arrest be inquired into under the writ of habeas corpus? These questions involved a knowledge not only of the constitutional history of the mother country, but of judicial precedents and of legal principles. Magna Charta, indeed, provided in express terms that no freeman should be taken or imprisoned, unless by the lawful judgment of his peers, or by the law of the land; but it was the writ of habeas corpus, framed by the liberty-loving lawyers, and "rendered more actively remedial by the statute of Charles II.," that gave life and vigor to that famous clause of the great charter. In Old England, it was John Hampden, the lawyer, who refused to pay the twenty shillings of ship money, because it was a tax imposed without consent of parliament. True, the decision of the royal judges was against him, but his sturdy defence of the legal rights of every subject made him the most popular man in England and cost King Charles his head. In New England, a century later, it was James Otis, the lawyer, who attacked the writs of assistance with such a wealth of legal learning, and such fiery eloquence, that the scene in which he figured in the old town house in Boston has been entitled the opening scene of the American Revolution. Such an impression did it make on John Adams, that he declared American independence was then and there born. According to this authority, our great republic had its genesis not at Concord nor Bunker Hill, nor yet in Independence Hall at Philadelphia; but in a lawyer's speech in a lawsuit.

Although the noble part played by lawyers in the great crises of constitutional history, among English speaking peoples, is generally acknowledged, the popular view of the profession, in matters of private law, is, I fear, still that of

Richard De Bury and of Napoleon. We are charged with a disposition to protract litigation and to twist "the meaning of statutes to the purpose of our own machinations;" with living upon the quarrels of others and even stirring up disputes to promote our own interests. In short, we are deemed the parasites of society, living upon values but creating none. Is this a correct view? If it were, we ought to find those nations the happiest, the most peaceful and orderly, the richest and the most progressive, in which the legal parasites are the fewest. But the actual state of things is just the opposite of this. China has no lawyers. In Russia the proportion of lawyers to population is one to thirty-one thousand. In Germany, one to eighty-seven hundred; in France, one to forty-one hundred; in England, one to eleven hundred; in the United States, one to seven hundred. These statistics would tend to show that the legal profession is a blessing rather than an evil; that its members are not parasites of society, but, on the other hand, if not direct creators of values, that they are the protectors of those engaged in production.

Let us examine the function of the lawyer with a view of discovering whether this interpretation of the statistics is correct. In 1670, William Penn and his companion, Mead, were tried at the Old Bailey, London, for an unlawful assembly. The officers of the crown used every possible effort to secure a conviction, and the judge openly threatened the jurors with punishment, if they dared to bring in a verdict of acquittal. Notwithstanding all this pressure, Penn and Mead were acquitted. Thereupon, the jury were fined by the judge for bringing in a verdict which he declared was against the evidence. One of the jurors, named Bushel, refused to pay the fine, was committed to prison, and sued out a writ of habeas corpus. Upon the return of this writ, a question of the highest importance was presented by the counsel for Bushel. For more than four centuries, Magna Charta had affirmed that no freeman should be taken or imprisoned, or disseized, or outlawed or banished, unless by the lawful judgment of his peers. But, if the judge could fine the jury for bringing in a verdict, which was contrary to his notion of the evidence, trial by jury was a mere mockery. Not by his



peers, not by an impartial jury of the vicinage, but by a judge appointed by the crown and removable at pleasure, was the guilt or innocence of a person to be decided. A matter of vital importance to the liberty of the citizen, it will be seen, was involved in this lawsuit of Bushel. Keenly was it appreciated and nobly was it argued by his counsel. The fine and the imprisonment were declared illegal, and "from that time forth the invaluable doctrine, that a jury in the discharge of their duty are responsible only to God and their consciences, has never been shaken or impeached." Not for Bushel only was the victory won by his lawyers, but for every jurymen, and for every person accused of crime, wherever English common law obtains.

So Hampden's refusal to pay the twenty shillings of ship money and his defence of the suit brought for its collection, were not prompted solely by selfish considerations. He and his counsel were contending for a great principle. If the King had lawful authority to levy a tax of twenty shillings on John Hampden, then all private property in England was held subject to the monarch's will. Not whether the individual Hampden should pay a petty tax, but whether any property holder in the realm could deem his ownership secure, was the issue. Royal judges obeyed their master's commands and condemned Hampden to pay. Appeal was taken to the nation. Monarch and servile judges were overthrown. The rule of law contended for by Hampden was re-established, and has ever since remained a cardinal principle of English jurisprudence on both sides of the Atlantic.

The breadth and sweep of a great legal principle are admirably illustrated by the Dartmouth college case. By the federal constitution the states are forbidden to pass any law impairing the obligation of contracts. Did the charter of Dartmouth college contain a contract between the state and the college corporation, was the important question in the case. Dartmouth college was the only corporation which was a party to the action; but by the decision of that one lawsuit, the rights of every private corporation were to be affected. Indeed, Sir Henry Maine pointed out, some years ago, that the decision was important to all English investors in American



corporate securities, and "that the construction of the constitutional provision by the famous case had secured full play to the economic forces by which the achievement of cultivating the soil of the American continent has been performed; that it is the bulwark of American individualism against socialistic fantasy; that until it is got rid of, communistic schemes have as much prospect of obtaining practical realization in the United States as the vision of a cloud-cuckoo-borough to be built by the birds, between earth and sky." The far-reaching nature of the issue then before the court, was clearly discerned by Mr. Webster, leading counsel for the college. At the close of an argument, perhaps one of the most brilliant and powerful ever addressed to the Supreme court, the great advocate declared, with quivering lips and choked voice:

"This, sir, is my case. It is the case, not merely of that humble institution, it is the case of every college in our land. Sir, you may destroy this little institution; it is weak; it is in your hands! I know it is one of the lesser lights in the literary horizon of our country. You may put it out. But if you do so, you must carry through your work! You must extinguish, one after another, all those greater lights of science, which for more than a century have thrown their radiance over our land. It is, sir, as I have said, a small college. And yet there are those who love it." Not often does a lawsuit possess the sweep and breath and far-reaching influence of the Dartmouth college case. But the vast majority of lawsuits contribute something towards the establishment or expansion or correction of an important legal rule. It is not given to many lawyers to act the dramatic and memorable part of Webster in that famous scene, when the rapt attention and tearful eyes of Chief Justice Marshall and his colleagues testified that the advocate had captured the court. But it is given to every lawyer of ability and character to leave his mark on the jurisprudence of his country. The great body of our law has been built up little by little from the accretions of the countless litigations, conducted by ordinary lawyers. It is to the efforts of this profession, composed chiefly of men unknown to fame, that the liberty of the citizen, the

freedom of speech and of the press, the security of private property in English speaking lands are due.

If any of my readers, notwithstanding the evidence thus far adduced, are still disposed to hold with Napoleon, that lawsuits are a cancerous evil, and that the state should strive to starve lawyers rather than to encourage them, I would commend to them the careful study of a famous little book—Ihering's *Struggle for Law*. I do not know of a more original or instructive bit of writing in the whole range of legal literature. The central doctrine of this learned jurist's thesis is, that the end of law is peace; but that this end is attained in a community in exact proportion as the legal sense of the citizen is keen, alert and fearless. The author's most striking illustration is one which we should hardly expect a German jurist to employ—the British traveler. Now we know that the Briton is not a popular personage on the continent of Europe, especially in his capacity of tourist; for leading English statesmen have repeatedly confessed to this, during the last three years. One of the reasons for his unpopularity, strangely enough, is declared by Ihering to be worthy of unqualified praise. He contrasts the Briton with his German countrymen in Austria. "The latter, when duped by inn-keepers, hackmen and the like," he says, "shun the disagreeableness of a public controversy and pay; while the Englishman resists all such unfair exactions," with a manfulness which would make one think he was defending the laws of Old England. In case of need, he even postpones his departure, remains days in the place, and spends ten times the amount he refuses to pay. Austrians laugh at him, and cannot understand him. "It would be better," asserts the learned jurist, "if they did understand him. . . . In the few pieces of silver which the Englishman refuses and which the Austrian pays, there lies concealed more than one would think, of England and Austria; there lie concealed centuries of their political development and of their social life." If we may accept the views of this brilliant jurist, the pet saying of the Scotchman that he will have peace if he has to fight for it, is not so ludicrous as it seems. Nay, it is a fit motto for the best citizenship. When the English tourist wins his lawsuit

against an overreaching or dishonest innkeeper or hackman, he not only vindicates his legal right, not only teaches this particular wrongdoer a wholesome lesson, but he wins exemption for himself and for his countrymen from similar improper exactions in the future. Indeed, it may be safely laid down as a general rule, that not only political liberty but every private legal right is most fully recognized and observed, in a community where it is well known that its invasion will call down upon the wrongdoer's head the heavy weight of a lawsuit. Let it be understood that the moment a legal right is violated, the victim will not only crave the law, but will find it easy to engage the services of a well-trained and able lawyer to enforce his petition, and the evil-minded man will think twice before deciding to violate the right. It is but natural, therefore, that in this republic, where the legal profession is, as it was in Burke's day, more numerous and influential than in any other land, we have the most orderly, peaceful and thriving population of the world.

Not long ago, I listened to an interesting address before the Society of Medical Jurisprudence, by Dr. Woodbury, street cleaning commissioner of New York city, on the sanitary condition of the metropolis. He displayed numerous pictures showing the bacteria infesting the atmosphere in various parts of the town. I was selfish enough to observe with pleasure, that the air surrounding Columbia University, on Morningside Heights, was comparatively free from these pests. On the east side, however, where we have the most densely populated square mile of territory, I believe, to be found anywhere on the earth's surface, the air was laden with bacteria, the density of microbes rivalling the density of mankind. I was astounded and alarmed. My fancy pictured all kinds of disease generating in the infested district and spreading havoc through the length and breadth of Manhattan Island.

At the close of the address, the theme was thrown open for discussion. One of the first to speak was a lawyer, who declared that as he listened to Dr. Woodbury and looked at the pictures, he wondered how human life could survive on that East side. He was born in that region, he assured us.



and had seemed to flourish in that atmosphere. As I looked at his genial, smiling face, and at his robust and well-padded physique, I began to thank God and take courage. Following him came a learned doctor, who assured us that all bacteria were not disease-breeders; that many forms were wholly beneficial. Instead of generating pestilence, they prevent it. Their function is to change decaying substances into new and useful forms, to transmute by their subtle alchemy poisons into cordials, the refuse of slums into food-producing forces. And now my fears were quite allayed.

If the lawyer is a pest, he is of the kind on which East side humanity flourishes. He is of the beneficial, not of the destructive sort. Recall the statistics of lawyers in the leading nations. China has none. Russia has a lawyer for every thirty-one thousand inhabitants; Germany, one to eighty-seven hundred; France, one to forty-one hundred; England, one to eleven hundred, the United States, one to seven hundred. Bear in mind the history of the legal profession and its function in developing legal rules, and I am sure that you will agree with me that if the lawyer is a pest, he is a liberty loving, freedom promoting, property guarding pest.

At present, there are many signs that popular opinion of the legal profession is veering to quite the opposite direction from that which it formerly held, and that the lawyer is hereafter to be deemed not so much a pest as a panacea. Most significant amongst these signs is the attitude of the Russian czar in inviting the leading nations to a conference, with a view of devising a scheme for the settlement of international disputes, not by the arbitrament of arms, but by the peaceful processes of the law. The tribunal of the Hague was the result. True it is, that the outcome, as yet, has fallen far below the czar's ideal. But had the Hague conference never been held, do you think Venezuela could have been saved from European conquest, except by the armed intervention of the United States? Germany, Britain and Italy had "entered into a league to make war and seize the assets of Venezuela" as security for their claims against her. "It was the so called international conscience that caused the failure of this coercive scheme and brought about a peaceable and orderly form of settlement." But what was the fulcrum



upon which international conscience fixed its lever for lifting this controversy out of the world-old grooves of war? Was it not the fact that provision had been made by the Hague conference for a tribunal, before which such controversies could be brought; where both sides could be heard and where a judicial decision could be secured? Never before has the force of international public opinion been so patent or so potent. The new German navy was spoiling for a fight; it was made well nigh frantic by its first taste of blood, but it was compelled to stay its rage and withdraw into non-combatant waters. A triple alliance, before which the petty South American republic was helpless, bowed to the demands of aroused christendom, and consented to refer the validity of claims as well as the order for their payment to arbitration.

This victory for arbitration gave Mr. Carnegie a splendid opportunity to unburden himself of more of his superfluous wealth. Straightway he offered a million and a half dollars to the government of Holland for the erection of a suitable building for the tribunal of the Hague, and added two hundred thousand for the equipment of a law library. Of course, the gift was accepted, and the handsome Dutch city is to be still further beautified by a "Temple of Peace." No more important gift than this has ever been made by the great capitalist, who has been fittingly styled the "Star-Spangled Scotchman." This Temple of peace is to be the permanent abiding place of international justice. To places on its judgment seat will be summoned from time to time great jurists, whose duty it will be not simply to apply existing rules of law, but to evolve new ones. They will find themselves often in the situation of Lord Mansfield, when engaged in laying the foundations of the modern commercial law of England. We are told that when a mercantile case came before him, he sought to discover not only the mercantile usage which was involved, but the legal principle underlying it. It was this habit which called forth the oft quoted eulogium of his disciple and colleague, Mr. Justice Buller: "The great study has been," said he, "to find some certain general principle not only to rule the particular case under consideration, but to serve as a guide to the future. Most of us have heard these principles stated and reasoned upon,

enlarged and explained, till we have been lost in admiration of the strength and stretch of the human understanding." Let us hope that we may have many Mansfields on the judgment seat at the Hague.

The bar of this international court will necessarily include the flower of the legal profession. Its members will not be called upon to expend their energies upon points of procedure, nor will their success depend upon their memory of the narrow and technical rules of their national legal systems. They will be picked men, those who have won distinction in their respective states, for their ability to discover the true principle underlying a great controversy, and their capacity to elucidate and apply it. Their anxiety to win a particular case will be tempered, as in every private lawsuit it should be tempered, by a prevision of the ultimate results of victory. They will appreciate, as the ordinary lawyer often fails to appreciate, that present success is dearly bought, if it is gained by winning the court to the adoption of an unsound return to plague the inventor. The bar of this court will illustrate very clearly the part played by the legal profession everywhere, in the development of law. As new cases arise, new rules must be formulated for their decision. The true greatness of a lawyer will be seen to consist in the accuracy with which he apprehends, and the lucidity and persuasiveness with which he expounds the principles of justice and the consideration of public policy, which must form the basis of every enduring rule of law.

The mere existence of this Temple of peace will exercise a potent influence. The fact that its portals are to be always open for contending nations; that their strifes may here be settled in the calm and peaceful atmosphere of a judicial tribunal; that the victories to be won shall be those of the intellect and the moral sense, all this will tend to strengthen the demand for international arbitration. More and more the lawsuit shall supersede the battle as a means of settling controversies between states, as it has almost wholly supplanted it in the adjustment of disputes between individuals. The lawyer shall take the place of the warrior as the champion of contending nations. The jurist, rather than the monarch, shall speak the final word in international disputes.

## OBEDIENCE TO LAW THE FIRST CIVIC DUTY.

BY DAVID J. BREWER.

[David J. Brewer, associate justice of the United States Supreme court; born June 20, 1837, in Smyrna, Asia Minor; graduated from Yale in 1856 and from the Albany Law school, 1858; practiced law in Leavenworth, Kan., 1859; appointed United States commissioner, 1861; justice Supreme court of Kansas, 1870-84; judge of the Circuit court United States, 1884-89; member of the Venezuela Boundary commission, 1896, and member of the British-Venezuela Arbitration tribunal, 1889; author of *The Pew to the Pulpit*, *The Twentieth Century from Another Viewpoint*, and, in 1902, of *American Citizenship*.]

It is a truism that all should obey the law. It is a part of the Anglo-Saxon's creed. Especially is this true where the law is not made for the citizen, but where the citizen makes the law. If a number of men unite in a partnership on equal terms, undoubtedly the majority should control and the minority submit to their judgment or quit the partnership. Ours is a government of the people, by the people and for the people.

The underlying principle of republican institutions is equality. Each man is entitled to one vote and no more. One man's vote is as good and no better than another's. Never, however, look upon it as property, something for barter and sale. It should be to every true American like the water of life, without money and without price. This rule of equality is the basic principle of our political life, however short we may come of realizing it.

The Declaration of Independence is still a living and glowing truth, and not a mere chromo of dead though glittering generalities. According to this, the majority determine and make the law and the minority must obey or go elsewhere. In our thought there is no place for resistance to law or for revolution to overthrow the decision of the ballot.

This duty of obedience to law being conceded, it being confessedly the principle upon which republican government is founded, why stop to consider it in relation to municipal government? No one will seriously contend that there is an

obligation to obey the law of the state or nation and one to obey the ordinances of a city. Therefore why discuss that which all admit to be true?

Although confessedly true, there are nevertheless some thoughts concerning it worthy of consideration, some things which make it fitting that the duty of obedience to law in a city should be pressed upon our attention. The ordinances of a city are its special laws. Undoubtedly the laws of the state are in force within the limits of the municipality. The criminal law of the state is as potent within as without the city limits. To kill a man inside the city is just as much murder as to kill him in the country.

And, speaking generally, the laws of the state and the nation operate as fully within as without the limits of a city. But in addition to these laws are the ordinances of the city enacted by the city authorities and operative only within the city. There are thus more laws requiring obedience. Further, the ordinances are laws of a special character, and by reason thereof justify special attention.

And the first thing which I wish to suggest is that there is more violation of law in a city than elsewhere. This is not a matter of mere mathematics. It is not simply because there are more laws to be obeyed, the ordinances of the city in addition to the laws of the state and nation. There is more crime in a city than in the country. As proof of this take the statistics from the penitentiaries. In Joliet, for instance, each year during the last three years, more than half the convicts came from Cook county.

Consider also the number in Chicago in jails and other places where lesser criminals are punished. Contrast the criminal dockets of the city with those of like courts in the country, and then in addition go any morning into the police courts and see the crowd gathered there for violations of the ordinances, and you will have no question of the truth of the proposition that crime is more abundant in the city than in the country.

There are many reasons for this. One is, the city is the abiding place, the habitat, of the criminal. The opportunities of escape and the means of concealment are greater.



William M. Tweed sat in a room in Brooklyn and looked out of his window at the great city of New York for months while the police and detective force were vainly seeking to find and arrest him. Again, criminals follow the paths of business. You never think of looking for a wholesale dry goods store out on the prairie. The merchant locates in a city where he is the most accessible, and the larger the city the better.

Now, vice and crime are business, and they go where property is and the multitudes are. There also they find their friends and sympathizers. In such localities and amid such surroundings their business flourishes. It is lonesome and dangerous to steal a horse in the country. Detection is easy, pursuit is quick, and friends are wanting. But larceny in the city is not half so dangerous, assistance is near and the rewards are greater. One thing especially provokes crime, and that is the mob. Let a strike be announced and a body of employees attempt by force to coerce their employers and how quickly a mob gathers.

The criminal crowds to the front to profit by it and plunder or do violence in the excitement. I do not turn aside from my thought to discuss the reciprocal rights of employers and employees. There are some things too plain for argument. That in the absence of a contract binding to the contrary there is a legal right on the part of employees, singly or in a body, to quit work; that in case they quit there is an equal right on the part of employers to seek other employees, and that there is the same right of other employees to take such employment when offered are propositions too plain for argument with those who have any conception of the meaning of the Declaration of Independence or believe that each man has an inalienable right to life, liberty and the pursuit of happiness. Force and violence to prevent the exercise of these unquestioned rights are criminal. A mob is itself criminal, and a mob almost always appears in a city.

A kindred fact is that the crank and the fanatic hasten to the city to find the material upon which they can most easily work. Barnum, the showman, divided the world

into two classes, the humbuggers and the humbugged, and certainly the representatives of these two classes are more abundant in the city than elsewhere. Every visionary deluded with an idea—and he always calls it a new idea—which he fancies may revolutionize the world, rushes to the place where he finds the multitude, to whom he makes known his revelation. There also are the constantly increasing crowds who seek city life under the hope of acquiring newspaper notoriety, position in life, or riches. They are the gullible ones, members of Barnum's humbugged branch of the human family.

No crank stays in a village or in the country to advertise his vagaries, but each goes where he can the more easily reach the many. The ancient Elijah went out in the solitudes by the brook Cherith, and was there fed by winged couriers of the air, but the modern Elijah seeks the great city, there to be supported by bipeds clothed in pantaloons and skirts, and having every attribute of men and women save common sense.

Every swindling corporation, every get-rich-quick concern, makes its headquarters in the city. What do they who are engaged in such schemes, whether as cranks, fanatic or swindler, care about the requirements of the law? And how indifferent are the ones gullible enough to be caught by such schemes to the regulations which experience has shown are necessary to protect the unwary against the wiles of the designing?

Another thing which is also potential is the rapidity with which life is lived in a city. Its people are in a hurry. There is a constant pressure to do something and to do it at once. Time with them flies at a marvelous speed, and in their haste they feel that they cannot stop to obey the (to them) trivial regulations which are needed to preserve the general peace and order. Their measurement of time is illustrated by a story of a prominent Kansas politician. One March he sold a horse to a farmer, warranting him to be only 5 years old. The farmer afterward ascertained that he was 14 years old. He failed to see the vendor until the following July, and then upbraided him for selling him a 14-year-old

horse as only 5 years old. The politician, looking at him benignantly, said: "Is that so? Is that horse which was 5 years old last March 14 years old now? My! how time does fly!"

Accompanying the rapidity of living is the changed manner of life. The marvelous inventions have revolutionized all our ways. From striking flints to matches, from horseback to automobile, from bus to elevated railroad, from messenger and letter to telephone and telegraph with or without wire. New curriculums have taken the place of the old-fashioned courses of education.

Methods of doing business are new. Mergers, combinations, are in order. A new literature possesses us.

Everything must be up to date. The minister finding in the hymn book the lines:—

"Oh, may my heart in tune be found  
Like David's harp of solemn sound,"

and believing the harp an out-of-date instrument, changed the lines to the following:

"Oh, may my heart be tuned within  
Like David's sacred violin."

The chorister, not to be outdone, rewrote them thus:

"Oh, may my heart go diddle-diddle  
Like unto David's sacred fiddle."

Another cause is the heterogeneous character of a city's population. No one of our large cities is filled with people of a single race. The world has been pouring on to our shores multitudes from every race and clime, and they gravitate toward our large cities. Even in staid old Boston there are more Irishmen than Americans. Chicago is pre-eminent in this respect. Not only is the foreign population enormous, but it is made up not from a single race, but from many. It is the most cosmopolitan city on the continent. There is scarcely a race on the face of the globe that is not represented, and many by multitudes. I remember hearing one boast that Chicago had more Irish in its midst than any cities in

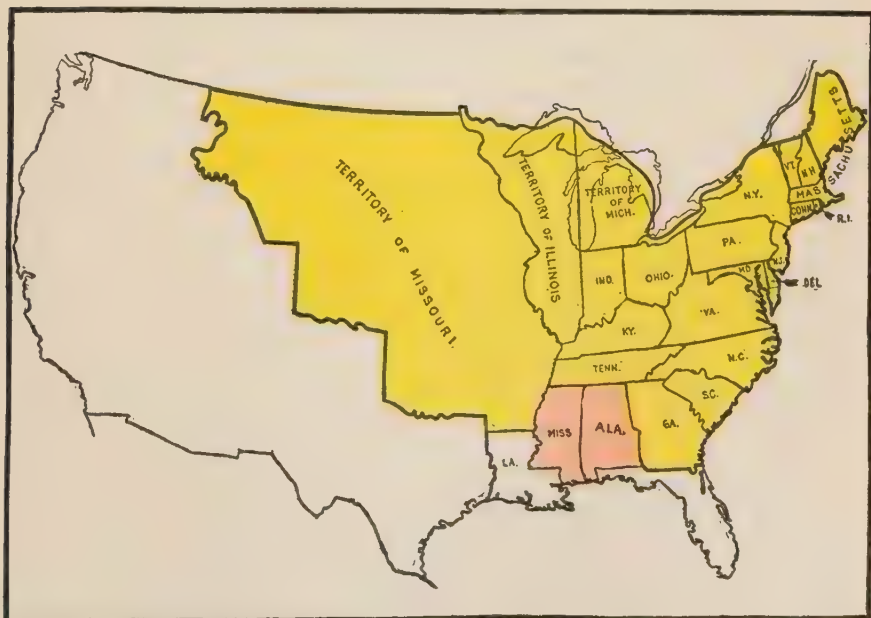








NO. 11.—1810-1812. UNITED STATES TAKES CONTROL OF TERRITORY EAST OF LOWER MISSISSIPPI RIVER ADJACENT TO NEW ORLEANS (1810). ORLEANS TERRITORY ADMITTED AS A STATE (1812), AND NAME OF LOUISIANA TERRITORY CHANGED TO TERRITORY OF MISSOURI.



NO. 12.—1817. TERRITORY OF ALABAMA FORMED FROM EASTERN PORTION OF MISSISSIPPI TERRITORY AND WESTERN PORTION OF TERRITORY ADMITTED AS STATE OF MISSISSIPPI.



Ireland save Dublin and Cork; more Poles than any city in Poland; more Germans than any cities in Germany other than Berlin and Munich, and so he went on until I felt constrained to interrupt him by saying, "And doubtless more saints and sinners than any place in the universe save heaven and hell."

Now this gathering of people from varied races and with different ideas of duty to the government and the meaning of liberty lead to frequent violations of law. To many of them government is an enemy and law means tyranny. Many find pleasures and practices they have been accustomed to at home (and which having been accustomed to they feel are among their inalienable rights) taken away altogether or restricted by municipal laws and police regulations. Is it strange that they fret at such laws and regulations and disregard them when possible? A German, accustomed to spend his Sunday afternoons with his family at some convenient garden where beer is sold, who finds that the sale of beer on Sunday is prohibited, does not feel guilty if he disobeys the law, and certainly never helps to enforce it.

And the more rigorously it is enforced the more he frets and denounces it as a trespass upon his rights, and the less he cares for the enforcement of other ordinances and regulations. In short, he condones a general disobedience of other laws and regulations because he is vexed at having this enforced against himself.

Another matter is the uncleanness and filth in which many lives are lived. The slums of a city are a constant danger. Cleanliness is next to godliness. There is a great difference between the clean dirt of the prairie and the filthy dirt of an alley. Vice and crime lurk in the latter. A bath is the severest punishment of a tramp. If you can once clean the homes of a city you will do away with much of its vice and crime. This opens a broad range of inquiry, but I must forbear entering it. Others will no doubt discuss at length this feature of city life and the best means of removing the evil.

I vainly urged upon public attention, years ago, the compulsory reservation in the beginnings of city life of certain portions of ground for public uses. Many states and terri-



tories have statutes providing for the platting of cities and additions to cities. Such official platting is a privilege and a benefit to the landowner who wishes to convert his prairie into city ground and sell by the lot, instead of by the acre.

What a blessing to the future life of the city it would be if every statute granting such privilege of official platting required as a condition thereof, or of receiving any privileges of city government with its advantages of a public supply of water and light, that the owner be compelled to dedicate not only ground for streets and alleys but also blocks for public uses.

When land is bought at \$1.25 an acre it is very little burden to compel one seeking to avail himself of the benefit of a statute designed to assist in transforming his 160-acre farm into city lots to donate ten or twenty acres thereof for public uses, the location to be designated by the officials of the county. Yet such a donation, one for which he would receive abundant compensation in the official platting of his ground, would mean for the future of that city not merely places for schoolhouses and other public buildings, but also small parks for the crowded inmates of city tenements. Only of late are the cities waking to the blessing and the need of parks and other breathing places within their limits, and thousands of dollars are paid to secure grounds therefor, grounds which a wise forecast of the future would have secured long ago without cost.

I have thus mentioned some of the causes of the greater violation of law in the city than in the country. Let me now turn your attention to some of the results of such violation. And in order fully to appreciate this we must consider why it is that there are so many minute police regulations in the city, so many things forbidden by such regulations, which the state does not deem it necessary to forbid when done in the country.

Contrast one living on his farm in the country, half a mile from any neighbor, with one living in the midst of a densely populated city. How many more things the former can do without injury or annoyance to others. And the true idea of liberty is not doing whatever one's judgment or wishes

suggest, but the right of doing those things which do not interfere with the well-being and happiness of others. The rights of others are the boundaries of every man's liberty.

The farmer's wife may throw the slops from the kitchen on the ground; he may put his pig pen in front of his parlor; he may burn soft coal and let the black smoke pour out of his chimney; he may store gunpowder or nitroglycerin or gasoline in his barn; he may drive his horse or run an automobile as fast as he pleases within the limits of his own farm; he may let his hogs roam at will in his own inclosure; give them, if he sees fit, the freedom of the place. As the Irishman living in a rented shanty said, "the pig had a right in the parlor, for the pig paid the rent." Many of these things may be offensive to one's olfactories; may breed flies or bugs or those invisible little scoundrels which science introduces to us and calls bacteria, and which do such incalculable mischief; may disfigure the looks of the buildings and grounds; may even be dangerous to life and limb, but so long as he alone is affected his nose can stand the smell; if he is content to have bugs and bacteria about him, if he is willing to risk the chances of his life or limb, the law permits it.

But place the same man in a city and he must be restrained in these respects, because otherwise he offends or endangers others. The soot from his soft coal fire will spot the faces or spoil the dresses of the ladies; the pig pen fills the air with odors which are offensive to his neighbor's sense of smell. The slops which are thrown out may, percolating through the soil, pass into the underground water courses. There may be typhoid germs therein. Not he or his family alone will suffer. Speed on the city streets, whether of horse or automobile, endangers the lives of multitudes, and for their sake you must forego the pleasures of racing. These are but illustrations, but they are enough to show the need of many restraints which the proximity of multitudes and their rights of comfort and health necessarily impose. The gasoline and the powder must be stored far away from the city limits, for when a fire is once started on one can predict where it will stop. If the Widow O'Leary had been compelled by ordinance to use a lantern instead of a candle when she went to milk

her cow, Chicago would have been saved the great fire of 1871.

It is not strange that the most widely abused individual is the policeman. He is the active agent of the municipality in enforcing its ordinances, the visible representative of all obnoxious petty and irritating city regulations. As those regulations touch the life of the individual at more points and more frequently than any other enactments, national or state, it is only natural that he who enforces them should be most disliked and consequently most frequently and wrongly criticised. You seldom see the United States marshal or state sheriff, or even the constable, but you see the policeman at every corner. The laws of the nation and the state, while far-reaching and by reason thereof profoundly affecting the social life, are nevertheless not brought to our attention so constantly as the police regulations of the municipality.

We know there is a statute defining and punishing murder, and we are thankful that there is. We know there are courts to try and officers to execute that statute, yet we never think of committing a murder, or of violating any other mandate of state or nation. Hence our attention is seldom arrested by those statutes or the officials by whom they are enforced. But the little things of daily life are reached by police regulations, and sometimes even without intending disobedience we violate or neglect them and the ever-watchful policeman is present to call our attention to that fact.

No man likes to be told that he has done wrong, even in little matters, and so the one who is forever dinging in his ears, "you have violated an ordinance," will surely become odious. We may in our cooler moments regard those ordinances as wise and salutary. We may not deliberately intend violation or neglect, but we are apt to think obedience is of comparatively trivial importance. Hence we are provoked when obedience is demanded, and our anger arises against the official who compels obedience. It is a familiar fact that little things are often the most annoying. A fly does little injury, and yet the buzzing of one about our face is often so irritating that we do not wait for the small boy to do our swearing.



Back of all this, too, is the fact that in our cities are multitudes of foreigners who have come to our shores with little or no conception of what liberty means—coming with an inborn and inherited hostility to government of all kinds, fancying that here is the freedom which means license in all things, and to them the policeman is the symbol of despotism. He represents government, and they rejoice at every discomfort which attends his actions.

But notwithstanding this abuse he is our best friend. All honor to the policeman. Shunned by criminals, who dread to hear the echo of his footsteps, ridiculed by society because he is not ubiquitous and omniscient, he is the visible arm of that municipal force which not only protects us, but throws around us those restraints which are essential to the general well-being and the public peace. As you go home late in the evening, how comforting it is to see the policeman standing at the street corner. What a feeling of safety in his presence, and as you retire to your couch the consciousness that he is patrolling the streets gives a sweet and composing sense of security.

To denounce him because of his inability to do all things is poor compensation for the fidelity with which he does most. When we come to build statues in honor of our faithful and efficient public servants, we shall find in every city a statue of a policeman.

Again, the strict enforcement of municipal regulations means not much merely for the physical safety and comfort, but also for the moral health of the community. Vice centers in a city, and all the attractions which vice is able to present find there the fullest manifestations. No one can be blind to its luxurious and costly establishments. Go into one of the first-class saloons and you will find everything which money can procure to induce the habit of drinking. The furniture is not merely comfortable, but luxurious; the walls are hung with pictures, while skillful manipulators place before you the most tempting and delightful concoctions, the most appetizing drinks, all of which are more or less saturated with alcohol. So pleasant is one experience that it is apt to be followed by many until the habit becomes settled.



These saloons are open upon every crowded street, and they are the constant invitation to the weary as well as to the lovers of excitement. The gambling houses, though not so open, are found by him who enters equally luxurious, and the passion for gain without toil is inflamed by the convenient drink. In other places music and wine and beautiful women, gorgeously gowned, are the ever-present temptations. Is it any wonder that so many young men coming into a city, away from their country homes and the influences which have hitherto surrounded them, find themselves drawn little by little into careers of vice which too often end in crime, crime committed in order to keep up the habits of vice?

All these congregated temptations make one vast appeal to suicide, for it is suicide all the same whether by the short haul of the pistol or the long haul of dissipation. Indeed, the latter may be considered the worst of suicides, for it not only involves the individual, but by the force of example and companionship gathers others into the same vortex. Is there any mistake in asserting that this centering of vice with its attractions in the city is steadily undermining the moral health of the community? Municipal regulations if strictly enforced, even if impotent to altogether remove vice with its temptations, do nevertheless in so far as they confine and restrict these temptations tend to the preservation of the moral health of the community.

Nor is this a matter in which the cities are alone interested. We all know that they are the centers from which radiate to all parts of the nation potent influences upon its life and character. You cannot conceive of a republic in which life in the country is wholly free from vice when life in the city is wholly saturated with it. The great newspapers are located in the city. They collect the story of its daily life and they go on the wings of steam into every village and hamlet and precinct of the land, and the character of the city life as shadowed forth in these papers finds its impress upon the life of the nation as a whole.

Everything, therefore, which tends to rehabilitate the moral health of a city is having its wholesome influence upon the moral health of the nation. And the republic can hope

to maintain its hitherto growing position in the family of nations only as it shows itself competent to master the life of its municipalities and relieve them from the corruption and evil influences which are so abundant therein. Indeed, many of our most thoughtful students of national life do not hesitate to affirm that its great problem is the establishment of a purer and more honest city life.

Many disheartened ones feel that the dark conditions of that life are evidences that popular government and free suffrage are failures, and fear that, as Carlyle said, democracy is "shooting Niagara." They point to the conceded fact that Washington is the best-governed city on the continent, the most free from corruption in its municipal life, and say that there and there only are the citizens deprived of all control. It is undeniable that many are troubled about this, and regarding with horror the corruption and lawlessness that prevail in many cities, wonder whether municipal government must not be considered outside the scope of the Declaration of Independence and to rightfully exist without the consent of the governed. Many remedies are suggested. To prevent wanton and unnecessary expenditures of public money and check the corruption that goes with it, some proposed that every municipal government shall have two legislative bodies, one representing the property and the other the individuals; or, to use a favorite phrase of the day, one representing the dollar and the other the man, and that no expenditures be permissible without the consent of both bodies.

But is it true that a man without property is more easily purchasable than a man with property? I fear experience would answer this in the negative. Another suggestion is that the police control be taken away from the city and vested in a commission appointed by the state. But that certainly ignores home rule, whatever may be its effect in the restraining of vice and violence within the city.

After all a better remedy, so far as any matter of organization is concerned, is a permanent tenure for those officials charged with maintaining public peace, together with a widening of the reach of civil service reform to all connected with its enforcement. The thought of stability in office of

those charged with the duty of preserving the public peace must be incorporated into municipal life. There has got to be impressed upon all dwellers in a city a full consciousness of the fact that there is a power to punish, a power that endures and a power that will never let up.

While I have endeavored to point out the significance and importance to the well-being of a city of a strict and full obedience to law, including therein the ordinances of the city, I desire to suggest a counterpart to this, and that is the duty not to unnecessarily vex with police regulations. Nothing frets one so much as petty and seemingly needless interference with his freedom of action. It is often said that that is the best government which governs the least. This, of course, cannot be taken as broadly and absolutely true, for the logical result would be that no government was better than any. As Dr. Holmes suggested by his poem on "The One-Hoss Shay," there are limits to logic. And yet if not broadly and universally true there is in it much of truth.

Undoubtedly that government is the best which interferes with the free action of the citizen no further than the protection of the rights of other citizens compels. For a city council or other governing board to pile up a multitude of needless restrictions is always offensive, and when those restrictions are petty in character they are exceedingly irritating. Hence wisdom and, therefore, duty demand that governing boards in cities, as elsewhere, keep their legislation behind rather than in advance of what many, perhaps even a small majority, regard as beneficial. While it is the duty of the minority to abide by and conform its action to the legislation enacted by the majority, yet it is equally true that the majority has no moral right, simply because it is a majority, to crowd its views into legislation offensive to a reasonable minority.

In other words, the minority has rights which the majority should respect, and the mere fact that proposed ordinances are satisfactory to the majority does not always justify their enactment. Regard should be had to the character of the proposed regulation, the benefit which will result, and the injury and irritation which it may cause.



It might not be an unreasonable and unfair use of power for the majority to prohibit smoking in cars or public halls, yet it would be a trespass on the liberties of the minority to prohibit smoking in the streets. For to the free use of the streets the minority has equal right with the majority, and the fact that some supersensitive one of the majority is occasionally offended by a whiff of tobacco smoke does not justify the majority in taking entirely away from the minority the privilege of smoking on the streets. Of course, in what I have been saying I have had no reference to cases in which a question of morality exists.

I want to refer to another matter; the inattention of officers of the law to its violations, especially in respect to ordinances which they consider of trivial moment or odious. As I have pointed out, police regulations deal with the minor affairs of conduct, and many are personally annoying. It is so easy for a public official to look upon their disregard as not deserving attention, especially when the delinquent is, as they say, a good fellow, or one having political influence, or that one who is in some respects more hurtful to society than the others—the eminently respectable citizen who wears good clothes and pays no taxes.

Snow is not cleaned off the sidewalk. Never mind, the warm weather will melt it in a few days, and it is too bad to annoy with a prosecution for such a trivial offense. One is speeding his horse or automobile beyond the regulations. No one is hurt. Why enforce an ordinance against that? A city ordinance forbids the sale of liquor on Sunday. Some thirsty fellow finds a saloonkeeper willing to open his back door and sell him a drink. The officer turns his back and looks in the other direction. Why should the individual lack his accustomed toddy, and why should one who does the kindly act of furnishing him a drink suffer for it? We must not be too particular about these little and vexatious things.

There are at least two potential objections to such inattention. One is that little infractions are apt to lead to larger violations of law. One who finds that the law is not vigorously enforced against him in the smaller matters of



conduct looks for like tolerance in disregard of more important obligations. One infraction opens the door for another, and he becomes an habitual violator. Then how easy the step from a misdemeanor to a crime! The other grave objection is that it leads to that most dangerous and altogether too frequent curse popularly known as "grafting." For toleration of a trivial infraction the official receives a slight gratuity, a mere present. His income is small.

The trifling present helps him. Once started on that line he is looking for these gratuities, until finally he comes to insist upon them as a condition of toleration. He is now ready for the graver cases of grafting which are arousing so much attention. Often some of these police regulations are burdensome and annoying, sometimes perhaps really unnecessary, but, as President Grant said, the best way to deal with a bad law is to strictly enforce it. If it be a bad law public sentiment will soon repeal it. We cannot be too urgent in our insistence that all violations of a city or the graver and more serious statutes of a state or the nation, shall be strictly enforced by all officials charged with the duty of enforcing them. In that way we impress upon all the significance of law and the necessity of obedience.

The easy-going, good-natured public official who deliberately closes his eyes to minor infractions of municipal law which it is his duty to restrain is one of the most hurtful factors in our municipal life. We may be thankful that a growing public sentiment is more and more insisting on a strict enforcement of all laws, municipal as well as state and national. And we may also be thankful for the bright examples which are furnished by many in every station from the lowest to the highest of rigorous insistence on obedience to law, examples whose healthful contagion will sweep through the country from ocean to ocean and from the lakes to the gulf. No matter what you may think of them in other respects, what law-abiding American is not proud of the fact that we have, not to mention others, two such magnificent examples as Joseph W. Folk and Theodore Roosevelt?

After all, in the long struggle for civic purity and righteousness, reliance must be placed not on mere modes of admin-

istration or forms of government, but on the unflinching purpose. The man behind the guns determines the outcome of the battle. It is often said that reform movements are spasmodic and last only for one campaign. The difficulty is that in all reform forces there are two considerable and unreliable factors. One consists of those who, being left out by the administration in power, hope through a change of administration to share in the offices and profits, and the other of those who believe in the reform movement only so far as it carries out their individual views. They are the unreasonable reformers who, if they cannot have things their own way, become immediately indifferent to the success of the movement. Both of these, and they are large elements, fall away at the next election.

Permanent success will come only through the widening and strengthening conviction that reform is to be sought for its own sake, not for any personal advantage, and that the crank is not a safe leader in reform movements. We must depend more and more on the growing number of those whose single thought is civic purity, righteousness and obedience to law.

## GROWTH OF OUR FOREIGN POLICY.

BY RICHARD OLNEY.

[Richard Olney, former United States attorney-general and former United States secretary of state; born Sept. 15, 1835, at Oxford, Mass.; was graduated from Brown university in 1856 and from Harvard Law school in 1858; was lawyer in Boston, 1859-1893, when he was appointed attorney-general United States, by President Cleveland, serving until 1895; United States secretary of state, 1895-97.]

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The characteristic of the foreign relations of the United States at the outbreak of the late Spanish war was isolation. The policy was traditional, originating at the very birth of the Republic. It had received the sanction of its founders—of Washington pre-eminently—had been endorsed by most if not all of the leading statesmen of the country, and had come to be regarded with almost as much respect as if incorporated in the text of the constitution itself. What the policy enjoined in substance was aloofness from the political affairs of the civilized world in general and a strict limitation of the political activities of the United States to the concerns of the American continents. It had been distinguished by two salient features which, if not due to it as their sole or chief cause, had certainly been its natural accompaniments. One of them was the Monroe doctrine, so-called, directly affecting our relations with foreign powers. The other was a high protective tariff aimed at sequestering the home market for the benefit of home industries and, though legally speaking of merely domestic concern, in practical results operating as the most effectual of obstacles to intercourse with foreign peoples.

While the Monroe doctrine and a protective tariff may be regarded as the distinguishing manifestations of our foreign policy prior to the late Spanish war, our “international isolation” has had other important consequences which should be briefly adverted to. The isolation policy and practice have tended to belittle the national character, have

led to a species of provincialism and to narrow views of our duties and functions as a nation. They have caused us to ignore the importance of sea power and to look with equanimity upon the decay of our navy and the ruin of our merchant marine. They have made us content with a diplomatic service always inadequate and often positively detrimental to our interests. They have induced in the people at large an illiberal and unintelligent attitude towards foreigners constantly shown in the disparagement of other peoples, in boastings of our own superiority, and in a sense of complete irresponsibility for anything uttered or written to their injury. This attitude of the people at large has naturally been reflected in their representatives in public life, while in officials brought in direct contact with foreign affairs it has often been even greatly intensified. Apparently, in their anxiety not to fall below the pitch of popular sentiment, they have been led to strike a note altogether beyond it. Hence have come, only too frequently and on but slight pretexts, violent diatribes against foreign governments and gross abuse of their peoples and institutions, not merely on the hustings, but on the floor of the senate or house; not merely by unknown solicitors of votes but by public officials in stations so prominent as to give to their utterances an air of real significance. The bad taste and worse manners of such utterances from such sources, whether in the past or in the future, need not be enlarged upon. The difference for the future is that they can no longer be made with impunity nor be excused by any professed belief in their harmlessness. The cheapest politician, the most arrant demagogue, can not fail to realize both that, after joining the international family of European states, the United States can not afford to flout its associates, and that foreign governments and peoples can not be expected to discriminate between the American people and those who represent them in appearance however much they may misrepresent them in fact.

Though historians will probably assign the abandonment of the isolation policy of the United States to the time when this country and Spain went to war over Cuba, and though the abandonment may have been precipitated by that contest,



the change was inevitable, had been long preparing, and could not have been long delayed. The American people were fast opening their eyes to the fact that they were one of the foremost powers of the earth and should play a commensurately great part in its affairs. Recognizing force to be the final arbiter between states as between individuals, and merit, however conspicuous and well-founded in international law, to be of small avail unless supported by adequate force, they were growing dissatisfied with an unreadiness for the use of their strength which made our representatives abroad less regarded than those of many a second or third class state, and left American lives and property in foreign countries comparatively defenseless. They had come to resent a policy and a condition of things which disabled the nation from asserting itself beyond the bounds of the American continents, no matter how urgently such assertion might be demanded in the interests of civilization and humanity, and no matter how clearly selfish interests might coincide with generous impulses and with what might even be claimed to be moral obligations. They had begun to realize that their industrial and commercial development should not be checked by limitation to the demands of the home market, but must be furthered by free access to all markets; that to secure such access the nation must be formidable, not merely in its wants and wishes and latent capabilities, but in the means at hand wherewith to readily exert and enforce them; and, as it could not hope to compass its ends without a sympathizer or friend among the nations, that it was imperative the United States should be ready to take any concerted action with other nations which its own special interests might require. In short, when our troubles with Spain came to a head, it had, it is believed, already dawned upon the American mind that the international policy suitable to our infancy and our weakness was unworthy of our maturity and our strength; that the traditional rules regulating our relations to Europe, almost a necessity of the conditions prevailing a century ago, were inapplicable to the changed conditions of the present day; and that both duty and interest required us to take our true position in the European family, and to both reap all

the advantages and assume all the burdens incident to that position. Therefore, while the Spanish war of 1898 is synchronous with the abandonment of its isolation policy by the United States, it was not the cause of such abandonment and at the most only hastened it by an inconsiderable period.

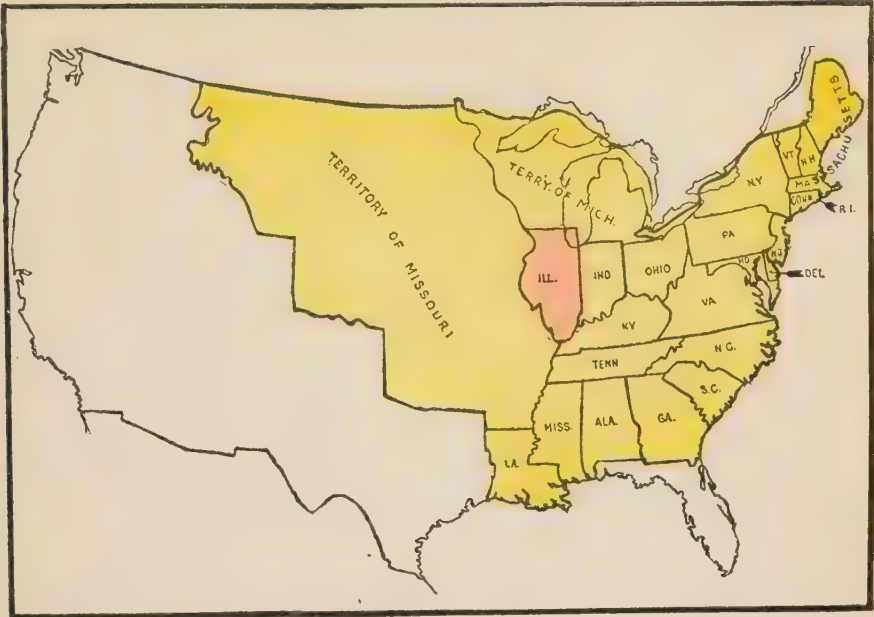
If our peculiar relations to Cuba be borne in mind—if it be remembered that the United States has always treated that island as part of the American continents, and, by reason of its proximity to our shores and its command of the Gulf of Mexico, as essential to our security against foreign aggression—it will be at once admitted that neither the Spanish war nor its result compelled or was responsible for the relinquishment by the United States of its isolation policy. That relinquishment—the substitution of international fellowship—the change from passive and perfunctory membership of the society of civilized states, to real and active membership—is to be ascribed not only to the various causes already enumerated, but above all to that instinct and impulse in the line of national growth and expansion whose absence would be a sure symptom of our national deterioration. For it is true of states as of individuals—they never stand still, and if not going forward, are surely retrogressing. This evolution of the United States as one of the great powers among the nations has, however, been accompanied by another departure, radical in character and far-reaching in consequences. The United States has come out of its shell and ceased to be a hermit among the nations, naturally and properly. What was not necessary, and is certainly of the most doubtful expediency, is that it should at the same time become a colonizing power on an immense scale. The annexation of the Hawaiian Islands need not now be taken into account and is to be justified, if at all, on peculiar grounds not possible to exist in any other case. But why do we find ourselves laboring under the huge incubus of the Philippines? There has always been a popular impression that we drifted into the Philippines—that we acquired them without being able to help ourselves and almost without knowing it. But that theory—however in accord with the probabilities of the case—that theory, with all excuses and palliations founded upon

it, is in truth an entire mistake. It is certain and has recently been declared by the highest authority that, having acquired by our arms nothing but a military occupation of the port and city of Manila, we voluntarily purchased the entire Philippine archipelago for twenty millions of dollars. The power of the government to buy—to acquire territory in that way—may be, indeed probably should be and must be admitted. Its exercise, however, must be justified by something more than the fact of its possession. Such exercise must be shown to have been demanded by either the interests or the duty of the United States. What duty did the United States have in the premises? The question of duty comes first—because if there were any, it might be incumbent on us to undertake its performance even at the sacrifice of our interests. What, then, was the call of duty that coerced us to take over the Philippine archipelago—that compelled us to assume the enormous burden of introducing order and civilization and good government into uncounted, if not uncountable, tropical islands lying thousands of miles from our coasts—that bound us to enter upon the herculean task of leading into the paths of “sweetness and light” many millions of people of all colors from the deepest black to the lightest yellow, of tongues as numerous and hopelessly diverse as those of the builders of the tower of Babel, and of all stages of enlightenment or non-enlightenment between the absolutely barbarous and the semi-civilized? It used to be said that our honor was involved—that having forcibly overthrown the sovereignty of Spain in the archipelago, we were bound in honor not to leave it derelict. But, as already noted, that proposition is completely disposed of by the official admission that we never held by conquest anything more than the city and harbor of Manila, and that our title to everything else rests on purchase. The same admission disposes of the specious argument, a cheap resource of demagoguery, that where the flag has once been hoisted it must never be taken down. But if, as now authoritatively declared, it had never been hoisted over more than the city and port of Manila, no removal of it from the rest of the archipelago was possible in the nature of things. If not bound in honor to buy the

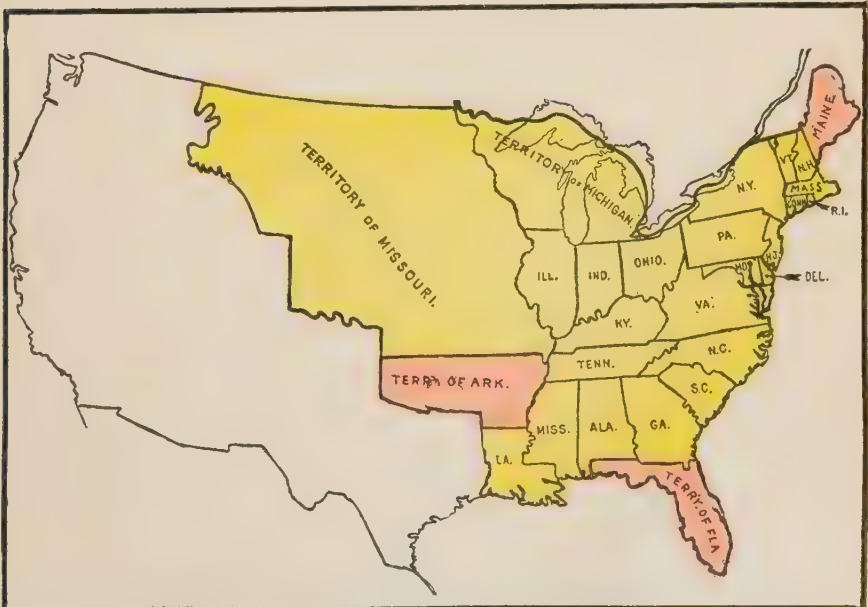








NO. 13.—1818. TERRITORY OF ILLINOIS DIVIDED AND STATE OF ILLINOIS FORMED. REMAINDER OF ILLINOIS TERRITORY ATTACHED TO MICHIGAN TERRITORY



NO. 14.—1819-1820. FLORIDA PURCHASED FROM SPAIN (1819). ARKANSAS TERRITORY FORMED FROM SOUTHERN PART OF TERRITORY OF MISSOURI (1819). MAINE, FORMERLY A DISTRICT OF MASSACHUSETTS, ADMITTED AS A STATE (1820).



Philippines, how otherwise were we bound? A distinguished senator, on his return from England last summer, being asked what was thought there of our Philippine imbroglio, is said to have answered that the English were laughing in their sleeves at us. They were not laughing, it may be assumed, at our disasters. They were not merry, unquestionably, over our waste of millions of treasure and over our sacrifice through battle and disease of thousands of valuable lives. They would naturally rather applaud than scoff at our ambitions in the line of territorial extension. But British risibles, not too easily excited under any circumstances, must indeed have been of adamant not to be moved by the justifications for our predicament vociferously urged by politicians and officeholders now especially prominent before the public. Does it appear or is it argued that the Spanish war was unnecessary—that the pear was ripe and ready to fall into our laps, without war and the killing of the reconcentrados, could we only have kept our heads and our tempers—that with a fair degree of tact and patience and common sense the Philippines might have been pacified—the astonishing answer is declamation about the beauties of the “strenuous life,” the latest euphemism for war! Does it appear or is it claimed that no trade we are likely to have with the Philippines and China together is likely to compensate us for the enormous cost of first subjugating and afterwards defending and governing the islands—an equally remarkable reply is that any such objections are shameful and unworthy; that we have a duty in the premises; and that whatever our wishes or our interests, or our sacrifices, we are under solemn obligation to carry the blessings of good government and civilization to the inhabitants of the Philippine archipelago! It is not easy to conceive of anything more baseless and more fantastic. As if war, under whatever alias, were not still the “hell” it was declared to be not by any apprentice to the trade, but by one of the great commanders of the age; as if charity should not begin at home and he who fails to make those of his own house his first care were not worse than the heathen; as if New York and Boston and all our cities did not have their slums and the country at large its millions of



suffering and deserving poor, whose welfare is of infinitely greater importance to us than that of the Kanakas and Malays of the Orient, and whose relief would readily absorb all the energies and all the funds the United States can well spare for humane enterprises. No wonder our British kinsmen guffaw at such extraordinary justifications of our Philippine policy. The Britisher himself is as far as possible from indulging in any such sickly sentimentality. He quite understands that the first and paramount duty of his government is to himself and his fellow-subjects; that, as regards all outside of the British pale, whatever his government may do in the line of benevolence and charity is simply incidental and subsidiary. He fully realizes that if territory is annexed, or control assumed of an alien race, it must be justified to the British nation by its promotion of the interests of the British empire. If the transaction can be justified to the world at large as also in the interest of a progressive civilization—and it must be admitted that it often can be—so much the better. But the British policy is first and last and always one of selfishness, however superior in point of enlightenment that selfishness may be. It is so of necessity and in the nature of things—as must be the policy of every other great power. None can afford not to attend strictly to its own business and not to make the welfare of its own people its primary object—none can afford to regard itself as a sort of missionary nation charged with the rectification of error and the redress of wrongs the world over. Were the United States to enter upon its new international rôle with the serious purpose of carrying out any such theory, it would not merely be laughed at but voted a nuisance by all other nations—and treated accordingly.

If not bound to buy the Philippines by any considerations of honor and duty, was it our interest to buy them?

Colonies may be greatly for the advantage of a nation. If it have a limited home territory and a redundant population, distant dependencies may afford just the outlet required for its surplus inhabitants and for the increase and diversification of its industries. It is manifest that no considerations of that sort are applicable in the case of the United States

and the Philippines. Were our population ever so dense, it could not be drained off to the Philippines where the white laborer can not live. But the United States, far from having a crowded population to dispose of, has an enormous area of vacant land which for generations to come will be more than adequate to all the wants of its people. Our purchase of the Philippines can be justified, then, if at all, only by its effect in creating or extending trade and commerce with the Philippines and with China. What can be said for the purchase from that point of view?

On this subject the thick and thin supporters of the administration seek to dazzle our eyes with the most glowing visions. A soil as fertile as any on the globe needs but to be tickled with the hoe—to use Douglas Jerrold's figure—to laugh with abundant harvests of all the most desired tropical fruits. Minerals of all kinds are declared to abound everywhere—virgin forests of the choicest woods to be almost limitless in extent—while as for coal, it is solemnly asserted to be even dropping out of the tops of mountains. Nothing, in short, is too good or too strong for the defenders of the Philippine purchase to say of the natural resources of the Philippines, and with declamation on that single point, they usually make haste to drop the subject. They do not stop to tell us what we are to sell to a community whose members live on the spontaneous growth of their mother earth, and clothe themselves very much as did our first parents after the expulsion from Eden. They fail to tell us, further, with what labor the vaunted resources of the islands are to be exploited, since the white laborer can not work there and the native will not. Shall we take the ground that what is bad for the United States is yet good enough for the Philippines and so legalize coolie immigration from China? Or, being just recovered from the bloodiest war of our time, waged for the national life but caused and inspired by hatred of negro slavery, shall we now follow up our Philippine investment by adopting the system of quasi-slavery known as “indentured labor” and hire “black-birders,” as they are called in Samoa, to “recruit” laborers in India or to steal or cajole negroes from among the outlying islands of the Pacific?

Upon these, as upon all the other difficulties which lead, not orators nor politicians, but business men and experts on the subject, to declare that the Philippine trade will never repay the cost of acquisition, the friends of the Philippine purchase are discreetly silent. They do not, however, rest their case wholly, nor as a rule, even to any great extent, on the Philippine trade alone. They point to China—to its swarming millions and the immense markets which the breaking down of Chinese traditional barriers will afford to the nations of the West—and they triumphantly assert that here is to be found the more than sufficient justification for the Philippine purchase. The claim would be much exaggerated even if the Philippines could give us the entire Chinese market, instead of simply letting us join in a neck and neck race for a share of it with every country of Europe. Be it assumed, however, that all that is said about the value of commerce with China—be it assumed, indeed, for present purposes that all that is said about the value of both the Philippine and the China trade—is fully borne out by the facts—what follows? That we were compelled to buy the Philippines in order to get our share? That is so far from being evident—is indeed so far from what seems to be the plain truth—that it is not too much to assert quite positively that we should have been in a better position to command our share of the Philippine and Chinese trade without the Philippines than with them. Chinese territory, it may be taken for granted, is not coveted by the most advanced of American jingoes. What they may come to in the future no one can predict, of course, but as yet no party and no section of any party in this country claims that, for the purpose of trade with China or for any other purpose, we should be one of the powers to demand and extort territory or territorial rights in China. The efforts of the United States are limited—and wisely limited—to seeking for its ships and its merchants equal opportunities in China—to promoting in Chinese waters and on Chinese soil the policy known as the “open door.” Is, then, the position of the United States, as insisting upon the “open door” in China, strengthened or weakened by its having the Philippine Islands on its hands? The



administration has apparently memorialized European powers on the ground of our legal rights to the "open door" under our treaties with China. But, if those powers have been rightly appealed to, it must be because they have become paramount in China—because by conquest or unrestricted cession they have displaced China's sovereignty and substituted their own—in which case any observance by them of our treaty stipulations with China becomes matter of grace and favor purely. Our appeals are said to have brought satisfactory "assurances." But such "assurances" can hardly be regarded as definite obligations, nor as more than expressions of present views and intentions, nor as being more unchangeable than the views and intentions themselves. In these commercial days, governments do not give something for nothing—if they accord trade privileges, it is for value received or expected—and the official representative of the czar in this country has already risen to explain as follows: "The extraordinary privileges for the importation of machinery and breadstuffs into Russia will of course not last forever. Americans understand the principle of the protective tariff too well to make lengthy explanation necessary. When Russian industries reach a stage where reasonable encouragement will produce good results, of course the necessary protection will be extended." We should indeed be credulous if we were to believe that, when the time comes which the Russian ambassador anticipates, either any "assurances" now given will prevent such customs regulations by Russia as her own interest requires, or will lead her to distinguish for our benefit between her Chinese possessions and her territory generally. We can count upon the maintenance of the "open door" in China, therefore, only if we can influence the powers concerned in one of two ways—by making it their interest to grant it through reciprocal concessions on our own part, or by a manifest readiness to back our demand for it by such physical force as they will not care to encounter. To the successful use of the first method, our Philippine possessions are a serious drawback if not an insuperable obstacle. If we claim the "open door" of the powers dominating China, how are we to deny it to them in our own dependencies and espe-



cially in the Philippines? One inconsiderate foreign office is already said to have answered us by asking our intentions as to the Philippines, and might, in view of the alleged vast extent of the Chinese markets, have not impertinently inquired if some other American territory would not also be opened to free trade. If the Philippines rather embarrass than help us in securing the "open door" in China by amicable arrangement, what is to be said upon the point of their enabling or aiding us to enforce it? We are told that they place us in the "front door-yard" of the "Orient" and, from that graphic figure of speech, are desired to infer and believe that the entire Philippine archipelago was and is necessary to our possession of power and authority in the Pacific. But it might as well be claimed that Gibraltar did not suffice for England's control of the Mediterranean and that for that purpose she ought to have in addition a large slice of Africa or of Spain. Assume to be true all that is said of the value of trade with China—assume that, if we can not get our share in any other way, we ought to be in a position to get it by force—assume that, to use such force or be prepared to use it, we must have a large navy which must be enabled to supply itself with coal—assume all this—and there is still no satisfactory proof that we had any occasion to buy the entire Philippine archipelago. Nothing, indeed, follows except that it would have been wise for us to acquire such part of the Philippines as was necessary to give us proper coaling stations and an adequate naval base. If that and that only had been done, we should have been in a better position to secure and protect our interests in trade with China than we are with the Philippine load on our backs. We should have been more likely to reach our end by friendly negotiations because we should have seemed less aggressive; should have excited to a less degree the jealousies and the rivalries of foreign peoples; and should have had less difficulty with our anomalous attitude in demanding free trade with the dependencies of other countries, while hampering free trade with our own by the severest restrictions. We should also have been stronger for accomplishing our object by force because, as compared with a proper naval base in the Philippines adequately sup-

plied, fortified, and garrisoned, our possession of the entire Philippine group is a source of weakness rather than of strength. The islands offer innumerable points of attack to any power with a hostile animus. Yet we must always be prepared to defend each and all of them at all hazards and with all our resources—the islands are ours as much as Massachusetts or Illinois—and not to maintain the integrity of American soil everywhere and against all comers, would deservedly expose us to universal contempt and derision. It follows, that, whereas our trade with China would have been amply secured and protected by the enlarged navy we must and should have under any circumstances, supplemented by an adequate naval base and coaling stations in the Philippines, the taking over of the whole archipelago enfeebles us for all purposes—by the immense, remote, and peculiarly vulnerable area we must defend; by the army we must maintain, not merely to prevent and deter aggression from without, but to hold down a native population thoroughly disaffected and resentful of the tactless and brutal policy hitherto pursued towards it; and by the tremendous drain on our resources which the civil and military administration of the islands will inevitably entail.

Thus, adequate grounds for the purchase of the Philippines by the United States, for considering it to be demanded by duty, or honor, or interest, are not apparent. Nevertheless, however bad the blunder, the possession of sufficient legal power to commit us on the part of those in charge of the government for the time being must be conceded. Whether we want the Philippines or not, and whether we ought to have them or not, that we have got them is something not to be denied. They are our “old man of the sea”—with this difference in favor of Sinbad, that by intoxicating his monster he managed to get rid of him. It is tolerably certain there is no such way out for us, and that if intoxication is any element in the case at all, it must have supervened at the time our “old man of the sea” was foisted upon us.

The thing is done. We were an American empire purely—and the United States, in taking its seat at the international council table and joining in the deliberations of civi-

lized states, might have been in an ideal position, combining the height of authority and prestige with complete independence and with a liberty of action which would enable us to always make our own interests our first care and yet allow us, when permitted by those interests, to say a timely word or do a timely deed wherever and whenever the cause of civilization seemed to require. This possible—this natural—ideal position, an exercise of the treaty power by the national executive and senate has deprived us of. We are no longer an American empire simply—we are become an Asiatic empire also, environed by all the rivalries, jealousies, embarrassments, and perils attaching to every power now struggling for commercial and political supremacy in the East, and starting the second century of national existence with all our energies and resources, which have proved no more than adequate to the good government and civilization of the white and black races of North America, pledged and mortgaged for the like services to be rendered by us to seven or eight millions of the brown men of the tropics. Nevertheless, we are committed—the Philippines are ours—how we shall deal with them is a domestic question simply—so that what remains to be considered is the effect of this exact situation upon the future of our foreign relations. The United States now asserting itself not only as one of the great powers of the world but as a power with very large Asiatic dependencies—what consequent changes in respect of its foreign relations must reasonably be anticipated?

It goes without saying that the United States cannot play the part in the world's affairs it has just assumed without equipping itself for the part with all the instrumentalities necessary to make its will felt either through pacific intercourse and negotiation or through force. Its diplomatic agencies must, therefore, be greatly enlarged, strengthened, and improved, while a powerful navy up to date in all points of construction, armament, general efficiency and readiness for instant service, becomes of equal necessity. Our Philippine possessions will not merely emphasize the urgent occasion for such innovations. They will make the innovations greater and more burdensome while at the same time compelling



others which we could have done without. The Philippines inevitably make our navy larger than it would have to be without them—they inevitably enhance the extent and the quality and the cost of the diplomatic establishment with which we must provide ourselves. But besides aggravating the weight and the expense of the necessary burdens involved in our assuming our true place among the nations, the Philippines add burdens of their own. There will be no respectable government of the islands until they are furnished with a large force of highly educated and trained administrators. Further, as already observed, were it not for the Philippines, we might have escaped the curse of any very large additions to our regular standing army. But the equipment required for our new international rôle need not be discussed at any length. We must have it—the need will be forced upon us by facts the logic of which will be irresistible—and however slow to move or indisposed to face the facts, the national government must sooner or later provide it. It is more important as well as interesting to inquire how the new phase of our foreign relations will affect the principles regulating our policy and conduct towards foreign states.

In dealing with that topic, it should be kept in mind that membership of the society of civilized states does not mean that each member has the same rights and duties as respects every subject-matter. On the contrary, the immediate interests of a nation often give it rights and charge it with duties which do not attach to any other. By common consent, for example, the right and duty of stopping the Spanish-Cuban hostilities were deemed to be in the United States on account of a special interest arising from Cuba's proximity to the United States and from the intimate relations of all sorts inevitably growing out of that proximity. So, though England is an insular power, her home territory lies so near the European continent that the internal affairs of the European states directly interest her almost as much as if the English channel were solid land. On the other hand, while the United States as regards Europe in general may also be regarded as an insular power, its remoteness and separation from Europe by a great expanse of ocean make its interest



in the internal affairs of European states almost altogether speculative and sentimental. Abstention from interference in any such affairs—in changes of dynasty, forms of government, alterations of boundaries and social and domestic institutions—should be and must be the rule of the United States for the future as it has been in the past.

Again, as between itself and the states of Europe, the primacy of the United States as respects the affairs of the American continents is a principle of its foreign policy which will no doubt hold good and be as firmly asserted in the future as in the past. A particular application and illustration of the principle are found in what is known as the Monroe doctrine, which will be as important in the future as in the past; our uncompromising adherence to which we have lately proclaimed to all the world; and which may and should command general acquiescence, since it requires of Europe to abstain from doing in America nothing more than we should and must abstain from doing in Europe.

It is to be remembered, however, that no rule of policy is so inflexible as not to bend to the force of extraordinary and anomalous conditions. During the Napoleonic wars, the United States wisely though with the utmost difficulty preserved a strict neutrality. But our weakness, not our will consented—we were the passive prey of both belligerents—publicly and privately we suffered the extreme of humiliation and indignity—and it is safe to say that were the career of the first Napoleon to approach or even threaten repetition, not merely sentiment and sympathy but the strongest considerations of self-preservation and self-defense might drive us to take sides. It is hardly necessary to add that the status of the United States as an Asiatic power must have some tendency to qualify the attitude which, as a strictly American power, the United States has hitherto successfully maintained towards the states of Europe. They are Asiatic powers as well as ourselves—we shall be brought in contact with them as never before—competition and irritation are inevitable and controversies not improbable—and when and how far a conflict in the East may spread and what domestic as well as foreign

interests and policies may be involved, is altogether beyond the reach of human sagacity to foretell.

Subject to these exceptions—to exceptions arising from extraordinary and anomalous European conditions and from difficulties into which the United States as an Asiatic power may draw the United States as an American power—subject to these exceptions, our new departure in foreign affairs will require no change in the cardinal rules already alluded to. Hereafter, as heretofore, our general policy must be and will be non-interference in the internal affairs of European states—hereafter as heretofore we shall claim paramountcy in things purely American—and hereafter as heretofore we shall antagonize any attempt by an European power to forcibly plant its flag on the American continents. It can not be doubted, however, that our new departure not merely unties our hands but fairly binds us to use them in a manner we have thus far not been accustomed to. We can not assert ourselves as a power whose interests and sympathies are as wide as civilization without assuming obligations corresponding to the claim—obligations to be all the more scrupulously recognized and performed that they lack the sanction of physical force. The first duty of every nation, is to itself—is the promotion and conservation of its own interests. Its position as an active member of the international family does not require it ever to lose sight of that principle. But, just weight being given to that principle, and its abilities and resources and opportunities permitting, there is no reason why the United States should not act for the relief of suffering humanity and for the advancement of civilization wherever and whenever such action would be timely and effective. Should there, for example, be a recurrence of the Turkish massacres of Armenian christians, not to stop them alone or in concert with others, could we do so without imperiling our own substantial interests, would be unworthy of us and inconsistent with our claims and aspirations as a great power. We certainly could no longer shelter ourselves behind the time-honored excuse that we are an American power exclusively, without concern with the affairs of the world at large.

On similar grounds, the position we have assumed in the world and mean to maintain justifies us in undertaking to influence and enables us to greatly influence the industrial development of the American people. The "home market" fallacy disappears with the proved inadequacy of the home market. Nothing will satisfy us in the future but free access to foreign markets—especially to those markets in the East now for the first time beginning to fully open themselves to the Western nations. Hitherto, in introducing his wares and in seeking commercial opportunities of any sort in foreign countries, the American citizen has necessarily relied almost altogether upon his own unaided talents, tact, and enterprise. The United States as a whole has counted for little, if anything, in his favor—our notorious policy of isolation, commercial and political, together with our notorious unreadiness for any exertion of our strength, divesting the government of all real prestige. In the markets of the Orient especially, American citizens have always been at a decided disadvantage as compared with those of the great European powers. The latter impress themselves upon the native imagination by their display of warlike resources and their willingness to use them in aid not merely of the legal rights of their citizens but in many cases of their desires and ambitions as well. If the native government itself is in the market, it of course prefers to trade with the citizen of a power in whose prowess it believes and whose friendship it may thus hope to obtain. If its subjects are the traders, they are affected by the same considerations as their government and naturally follow its lead in their views and their preferences. Obstacles of this sort to the extension of American trade can not but be greatly lessened in the future under the operation of the new foreign policy of the United States and its inevitable accompaniments. Our new interest in foreign markets can not fail to be recognized. Our claim to equal opportunities for our citizens and to exemption from unfriendly discrimination against them, will hardly be ignored if known to be backed by a present readiness and ability to make it good. "To be weak is miserable," and to seem weak, however strong in reality, often comes to about the same thing. Our diplo-



matic representatives, no matter how certain of the greatness of their country, have hitherto labored under the difficulty that nations to whom they were accredited, especially the Oriental nations, were not appreciative of the fact. That difficulty is unlikely to embarrass them in the future. They will, like the nation itself, cease to be isolated and of small consideration, and will speak and act with something of the same persuasiveness and authority as the representatives of European powers.

Along with the Monroe doctrine and non-interference in the internal concerns of European states—rules of policy which, generally speaking, will stand unaffected—has gone another which our changed international attitude will undoubtedly tend to modify. It has heretofore been considered that anything like an alliance between the United States and an European power, for any purpose or any time, was something not to be thought of. To give a thing a bad name, however undeservedly, is to do much to discredit it, and there is no doubt that the epithet “entangling”—almost invariably applied—has contributed largely to make “alliances” popularly and politically odious. Yet there may be “alliances” which are not “entangling” but wholly advantageous, and without the French alliance, American independence, if not prevented, might have been long postponed. It has been a prevalent notion that Washington was inimical to all alliances as such and left on record a solemn warning to his countrymen against them. Yet Washington clearly discriminated between alliances that would entangle and those that would not, and between alliances that were permanent and those that were temporary. Justly construed, Washington’s utterances are as wise to-day as when they were made and are no more applicable to the United States than to any other nation. It must be the policy of every state to avoid alliances that entangle, while temporary and limited alliances are better than general and permanent alliances because friends and partners should be chosen in view of actually existing exigencies rather than in reliance upon doubtful forecasts of the uncertain future. Nevertheless, up to this time the theory and practice of the United States have been



against all alliances pre-emptorily, and, were the Philippines not on our hands, might perhaps have been persisted in for a longer or shorter period. Whether they could have been or not is a contingency not worth discussing. We start our career as a world power with the Philippine handicap firmly fastened to us, and that situation being accepted, how about "alliances"? The true, the ideal position for us, would be complete freedom of action, perfect liberty to pick allies from time to time as special occasions might warrant and an enlightened view of our own interests might dictate. Without the Philippines, we might closely approach that position. With them, not merely is our need of friendship imperative, but it is a need which only one of the great powers can satisfy or is disposed to satisfy. Except for Great Britain's countenance, we should almost certainly never have got the Philippines—except for her continued support, our hold upon them would be likely to prove precarious, perhaps altogether unstable. It follows that we now find ourselves actually caught in an entangling alliance, forced there not by any treaty or compact of any sort, formal or informal, but by the stress of the inexorable facts of the situation. It is an alliance that entangles because we might be and should be friends with all the world and because our necessary intimacy with and dependence upon one of them is certain to excite the suspicion and ill-will of other nations. Still, however much better off we might have been, regrets, the irrevocable having happened, are often worse than useless, and it is much more profitable to note such compensatory advantages as the actual situation offers. In that view, it is consoling to reflect that, if we must single out an ally from among the nations at the cost of alienating all others, and consequently have thrown ourselves into the arms of England, our choice is probably unexceptionable. We join ourselves to that one of the great powers most formidable as a foe and most effective as a friend; whose people make with our own but one family, whose internal differences should not prevent a united front as against the world outside; whose influence upon the material and spiritual conditions of the human race has on the whole been elevating and beneficent; and whose example and experience can not

help being of the utmost service in our dealing with the difficult problems before us.

In undertaking any forecast of the future of our foreign relations, it is manifestly impracticable to attempt more than to note certain leading principles which, it would seem, must inevitably govern the policy of the United States. It is not rash to affirm in addition, however, that a consequence of the new international position of the United States must be to give to foreign affairs a measure of popular interest and importance far beyond what they have hitherto enjoyed. Domestic affairs will cease to be regarded as alone deserving the serious attention of Americans generally, who, in their characters, interests, and sympathies can not fail to respond to the momentous change which has come to the nation at large. Such a change will import no decline of patriotism, no lessening of the loyalty justly expected of every man to the country of his nativity or adoption. But it will import, if not for us, for coming generations, a larger knowledge of the earth and its diverse peoples; a familiarity with problems world-wide in their bearings; the abatement of radical prejudices; in short, such enlarged mental and moral vision as is ascribed to the Roman citizen in the memorable saying that, being a man, nothing human was foreign to him.

## TRIUMPHS OF AMERICAN DIPLOMACY.

BY JOHN HAY.

[John Hay, late secretary of state of the United States; born Oct. 8, 1838, in Salem, Ind.; was graduated from Brown, 1858; private secretary of President Lincoln; assistant adjutant-general United States volunteers; first assistant secretary of state, 1879-81; president International Sanitary conference, 1881; ambassador to Great Britain, 1897-98; secretary of state, 1898-05; author of *Castilian Days*, *Pike County Ballads*, *Abraham Lincoln*, as co-author, *Poems*, *Sir Walter Scott*.]

There is wanted from me nothing but the truth, and yet if I confine myself to the truth I cannot help feeling that I shall do my profession a wrong in the minds of those who have been in the habit of considering diplomacy an occult science as mysterious as alchemy and as dangerous to the morals as municipal politics. It must be admitted that this conception of the diplomatic function is not without a certain historical foundation.

There was a time when diplomacy was a science of intrigue and falsehood, of traps and mines and countermines. It may be another instance of that credulity with which I have often been charged by European critics when I say that I really believe the world has moved onward in diplomacy as in many other matters.

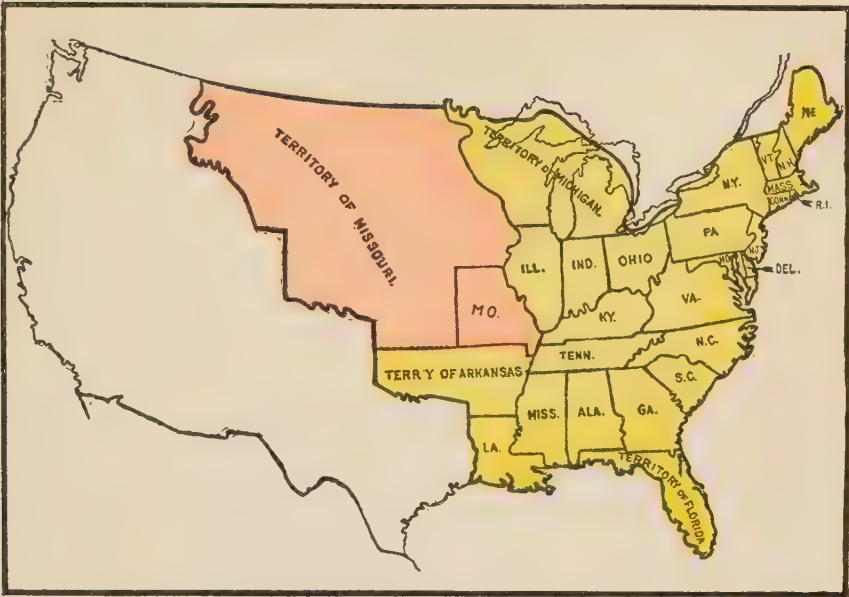
In my experience of diplomatic life, which now covers more years than I like to look back upon, and in the far greater record of American diplomacy, which I have read and studied, I can say without hesitation that we have generally told squarely what we wanted, announced early in negotiation what we were willing to give, and allowed the other side to accept or reject our terms. During the time which I have been prominently concerned in our foreign relations I can also say that we have been met by the representatives of other powers in the same spirit of frankness and sincerity.

As to the measure of success which our recent diplomacy has met with, it is difficult, if not impossible, for me to speak.

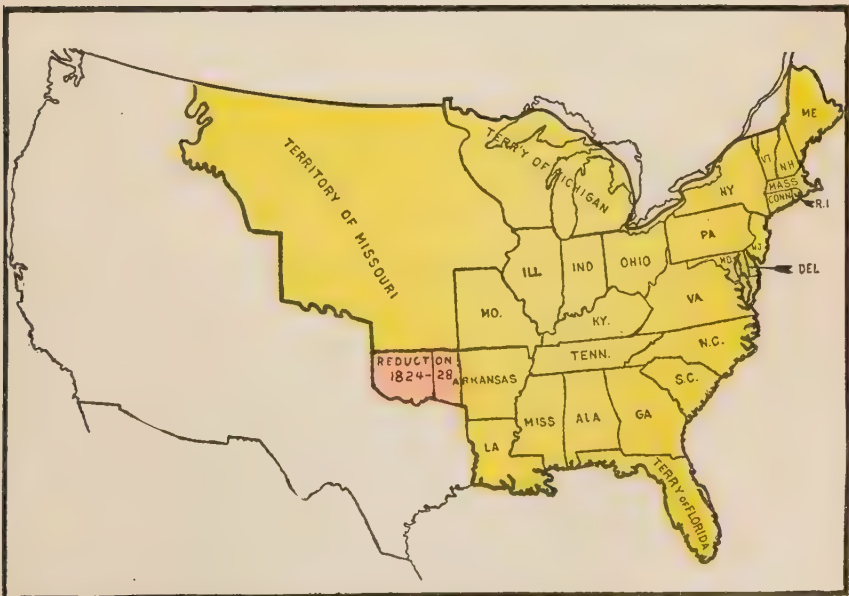








NO. 15.—1821. STATE OF MISSOURI FORMED, BUT NAME OF MISSOURI TERRITORY RETAINED FOR THE UNDIVIDED PORTION OF THE LOUISIANA PURCHASE.



NO. 16.—1824-1828. REDUCTION OF AREA OF ARKANSAS TERRITORY IN 1824 AND IN 1828.



There are two important lines of human endeavor in which men are forbidden even to allude to their success—affairs of the heart and diplomatic affairs.

But if we are not permitted to boast of what we have done, we can at least say a word about what we have tried to do, and the principles which have guided our action. The briefest expression of our rule of conduct is perhaps the Monroe doctrine and the golden rule. With this simple chart we can hardly go far wrong.

I think I may say that our sister republics to the south of us are perfectly convinced of the sincerity of our attitude. They know we desire the prosperity of each of them and peace and harmony among them. We no more want their territory than we covet the mountains of the moon. We are grieved and distressed when there are differences among them, but even then we should never think of trying to compose any of these differences unless by the request of both parties to it. Not even our earnest desire for peace among them will lead us to any action which might offend their national dignity or their just sense of independence. We would endow them with all the consideration we claim for ourselves.

As to what we have tried to do—what we are still trying to do—in the general field of diplomacy, there is no reason for doubt on the one hand or reticence on the other. President McKinley in his messages made the subject perfectly clear. We have striven, on the lines laid down by Washington, to cultivate friendly relations with all powers, but not to take part in the formation of groups or combinations among them.

A position of complete independence is not incompatible with relations involving not friendship alone but concurrent action as well in important emergencies. We have kept always in view the fact that we are pre-eminently a peace-loving people; that our normal activities are in the direction of trade and commerce; that the vast development of our industries imperatively demands that we shall not only retain and confirm our hold on our present markets but seek constantly, by all honorable means, to extend our commercial interests in every practicable direction.



It is for this reason we have negotiated treaties of reciprocity, all of them conceived in the traditional American spirit of protection to our own industries, and yet mutually advantageous to ourselves and our neighbors. In the same spirit we have sought successfully to induce all the great powers to unite in a recognition of the general principle of equality of commercial access and opportunity in the markets of the Orient. We believe that "a fair field and no favor" is all we require and with less than that we cannot be satisfied. If we accept the assurances we have received as honest and genuine, as I certainly do, that equality will not be denied us, and the real result may be safely left to American genius and energy.

We consider our interests in the Pacific ocean as great now as those of any other power and destined to indefinite development. We have opened our doors to the people of Hawaii; we have accepted the responsibility of the Philippines which Providence imposed upon us; we have put an end to embarrassing conditions in which we were involved in Samoa, and while abandoning none of our commercial rights in the entire group, we have established our flag and our authority in Tutuila, which gives us the finest harbor in the south seas.

Next in order will come a Pacific cable and an isthmian canal for the use of all well-disposed peoples, but under exclusive American ownership and American control—of both of which great enterprises President McKinley and President Roosevelt have been the energetic and consistent champions.

Sure as we are of our rights in these matters, convinced as we are of the authenticity of the vision which has led us thus far and still beckons us forward, I can yet assure you that so long as the administration of your affairs remains in hands as strong and skillful as those to which they have been and are now confided, there will be no more surrender of our rights than there will be violation of the rights of others.

The president to whom you have given your individual trust and confidence, like his now immortal predecessor, is as incapable of bullying a strong power as he is of wronging a weak one. He feels and knows—for has he not tested it, in the currents of heady fight, as well as in the toilsome work

of administration?—that the nation over whose destinies he presides has a giant's strength in the works of war, as in the works of peace. But that consciousness of strength brings with it no temptation to do injury to any power on earth, the proudest or the humblest.

We frankly confess we seek the friendship of all the powers; we want to trade with all peoples; we are conscious of resources that will make our commerce a source of advantage to them and also profit to ourselves. But no wantonness of strength will ever induce us to drive a hard bargain with another nation because it is weak, nor will any fear of ignoble criticism tempt us to insult or defy a great power because it is strong or even because it is friendly.

The attitude of our diplomacy may be indicated in a text of scripture which Franklin—the first and greatest of our diplomats—tells us passed through his mind when he was presented at the court of Versailles. It was a text his father used to quote to him in the old candle shop in Boston when he was a boy: "Seest thou a man diligent in his business, he shall stand before kings." Let us be diligent in our business and we shall stand—stand, you see, not crawl, nor swagger—stand, as a friend and equal, asking nothing, putting up with nothing but what is right and just, among our peers, in the great democracy of nations.

## PROGRESS OF INTERNATIONAL ARBITRATION.

BY GEORGE GRAY.

[George Gray, judge United States Circuit court; born May 4, 1840; graduated from Princeton, 1859; educated in law at Harvard; began career as lawyer at New Castle in 1863 and afterward in Wilmington; United States senator from Delaware, 1885-99; member of peace commission at Paris, 1898; member of the International Permanent Court of Arbitration under the Hague convention, 1900.]

It was a noble effort of a few noble men a decade ago to lead the opinion of the country in the direction of international arbitration. It is true, they represented the advanced thought of our time, but advanced thought meets with many discouragements. Statesmanship was indifferent, and practical politics hostile. Good people, the world over, listened to the dreams of the dreamers, but they thought they knew better than to expect that those dreams should ever be realities. They did not see, or did not recognize, the spiritual ferment which was everywhere stirring the minds and hearts of men; and so to-day we are following, rather than leading, public opinion toward the goal of peaceful arbitration of international differences, and to a realizing sense of the waste and folly of international war.

There has been a certain fullness of time that has made itself manifest before any of the great forward movements in the world's history have taken place, and that fullness of time seems now to have arrived for such a forward movement in the great cause we have at heart. There has been a long preparation for such a consummation. The peoples of the world are being drawn closer together by the wonderful achievements of science and art. The estranging seas no longer separate but unite the people of the old world and the new, and a solidarity of material interests has produced something like a solidarity of thought and feeling. The belief that what was hurtful or injurious to the prosperity and well-being of one country might be helpful and beneficial to another is not so prevalent as it once was.

We no longer consider the advance of alien peoples in wealth and prosperity as a menace to our own. We are more prone now than formerly to recognize such advance as an increment to the world's wealth, in which all, sooner or later, must have some share, however small; that, as the waters of a great lake cannot be drawn from or depleted at its most remote corner without sensibly affecting the general level of the great body of its waters, so the material waste and destruction and moral deterioration of a war between nations, however remote, must to some extent injuriously affect the civilized world.

The economic waste, consequent upon the maintenance of the great and increasing military and naval establishments of the world, is beginning to make its due impression upon the enlightened conscience and intelligence of increasing numbers in all countries. Altruism is no longer to be banished from national policies and national conduct, and there is growing recognition of the truth that the obligations of the moral law are imposed upon nations as well as upon individuals. Public opinion is no longer fenced in by national boundaries. It has overleaped them all, and now an international public opinion is making itself felt from one corner of Christendom to the other, and, through the instrumentality of a free press, forecasts and controls the conduct and policies of kings and cabinets.

It may be said, and perhaps truly, that these are tendencies, and not accomplished results; but they are tendencies that fill our hearts with hope and encouragement. The progress of civilization has been a slow one. Inveterate prejudices die hard. There has been an ebb and flow, a receding as well as an advancing tide; but, on the whole, we recognize the steady gain of man. We are ourselves carried along with the tendencies of the time in which we live. We must recognize the opportunity and obey the call that has sounded in our ears of a power higher than ours. We are not to be discouraged by untoward conditions. The czar of Russia, who suggested the Hague tribunal, is involved in internecine war that strains the resources of his empire, but the International court of arbitration at the Hague will remain an enduring monument to his wisdom, and shed more glory upon his reign than



any triumph, however great, his armies might achieve. The establishment and continued existence of the Permanent court of International arbitration will make it more difficult in the future than it has been in the past for nations to engage in war. I believe that its influence will grow slowly, but steadily, and that each resort to its decisions will tend to form and strengthen the habit of looking thitherward, to settle international difficulties by an appeal to reason instead of an appeal to arms.

There is a good ground for thinking that the project of a treaty of arbitration between England and the United States is in a forward state of progress, and that the rejection of the Treaty of 1897 by the senate will help, rather than hinder, the present movement. Its first rejection has served to concentrate public attention upon the subject, and in the meantime free discussion and criticism have served to measurably mature a favorable public opinion on both sides of the Atlantic. What imagination is not kindled, what heart does not glow, at the thought of an arbitral agreement between the two great English-speaking nations of the world! Too powerful to be animated by any other motive than a brave and worthy one, the moral effect of their agreement in such a treaty could not fail to advance the cause of international arbitration to a world-wide acceptance.

As for ourselves, we are bound by our own past. There is no more glorious page in our history than that which records its list of arbitral agreements and establishes its leadership in upright diplomacy and peaceful settlement of international difficulties. That international law is no longer the sport of kings and a mockery of the hopes of humanity is largely due to the assertion of its obligations by the statesmen of our formative period. "The parliament of man, the federation of the world," is emerging from the mist of poetry into the sunlight of the practical world. When American diplomacy secures an open port from China, it is not for American commerce alone, but for the commerce of the world. A selfish, sordid, aggressive, or merely a self-serving national policy will be more difficult to maintain in the future than it has been in the past.

Our own national conduct must more and more conform to the enlightened conscience of the country, and will more and more have applied to it the test of morality as well as of self-interest. What we would highly, that would we holily, and, in the words of an American president, "I mistake the American people if they favor the odious doctrine that there is no such thing as international morality; that there is one law for a strong nation and another for a weak one; and that even by indirection a strong power may, with impunity, despoil a weak one of its territory." There is growing to be a chivalry among nations, as there has been a chivalry among men, and under the protection of that sentiment the weak nations of the world are measurably secure from aggression or spoliation. No present advantage will justify national disregard of this high behest, or heal the wound inflicted upon the honor of a nation by the abuse of its power.

One of the most notable triumphs in the cause of international arbitration in recent times was the submission by the United States and Great Britain to an arbitral tribunal of the difficult questions arising out of the disputed Alaskan boundary, which had so long vexed the diplomacy and menaced the peace of both countries. It is hard to exaggerate the importance of the submission and of the judgment which ensued. The question submitted was not only one of long standing, but involved many things irritating to the inhabitants of both countries. Feeling and passion had become excited on both sides, and the conditions which are generally antecedents of war were beginning to be manifest. All that has now passed away with the judgment of the tribunal, and, notwithstanding some outcry from our friends across the Canadian border, general acquiescence characterizes the situation. Moreover, the submission involved a territorial question, and it was also thought, by excited patriots, to touch to some extent the honor of the two countries; in other words, the submission covered points which cautious friends of arbitration have been over-careful to exclude from its jurisdiction.

The submission to the Hague tribunal, by three of the most powerful nations of the world, of the question of preferential treatment in the payment of claims by the Venezue-

lan government, is another notable triumph, from which we take much encouragement for the future. A warlike demonstration was being made by the claimant nations, any one of whom could have enforced its will, with comparatively little trouble, against so weak a debtor nation. The assent given by the governments interested to the insistence of the United States that their claims should be submitted to arbitration, and their final agreement to refer a part of the controversy to the Hague tribunal, has done much to strengthen the sentiment that supports this great international tribunal.

These two arbitrations and the contention by our state department for world-open ports in China are in line with the best traditions of American diplomacy, and reflect credit on the administration which promoted them.

I trust that I am not too optimistic. I fully realize that there are yet many difficulties to overcome, and that stout hearts and a firm purpose are necessary to the accomplishment, even in part, of the object we have in view. But we have passed through the stage of indifference, and contest now with those who oppose would only strengthen our cause. The growing civilization of our time, the broader humanity, and more catholic spirit that characterize the generation now on the stage, the diffusion of intelligence and the freer intercommunication of thought between the peoples of the world, have brought to our side the most generous impulses and pious aspirations of the day in which we live. We hail the oncoming years of the new century with high hopes and renewed faith.

# AMERICA'S WORK FOR THE WORLD'S PEACE.

BY JOHN HAY.

[John Hay, late secretary of state of the United States; born Oct. 8, 1838, in Salem, Ind.; was graduated from Brown, 1858; private secretary of President Lincoln; assistant adjutant-general United States volunteers; first assistant secretary of state, 1879-81; president International Sanitary conference, 1881; ambassador to Great Britain, 1897-98; secretary of state, 1898-05; author of *Castilian Days*, *Pike County Ballads*, *Abraham Lincoln*, as co-author, *Poems*, Sir Walter Scott.]

The policy of the nation at large, which owes so much of its civic spirit to the founders of New England, has been in the main a policy of peace. During the years of our independent existence we have had but three wars with the outside world, though we have had a most grievous and dolorous struggle with our own people. We have had, I think, a greater relative immunity from war than any of our neighbors. All our greatest men have been earnest advocates of peace. The men who founded our liberties with the mailed hand detested and abhorred war as the most futile and ferocious of human follies. Franklin and Jefferson repeatedly denounced it—the one with all the energy of his rhetoric, the other with the lambent fire of his wit.

But not our philosophers alone—our fighting men have seen at close quarters how hideous is the face of war. Washington said: "My first wish is to see this plague to mankind banished from the earth"; and again he said: "We have experienced enough of its evils in this country to know that it should not be wantonly or unnecessarily entered upon." There is no discordant note in the utterances of our most eminent soldiers on this subject. The most famous utterance of General Grant—the one which will linger longest in the memories of men—was the prayer of his war-weary heart, "Let us have peace." Sherman reached the acme of his marvelous gift of epigram when he said, "War is hell." And Abraham Lincoln, after the four terrible years in which he had directed our vast armies and navies, uttered on the



threshold of eternity the fervent and touching aspiration that "the mighty scourge of war might speedily pass away."

There has been no cessation of continuity in the sentiments of our presidents on this subject up to this day. McKinley deplored with every pulse of his honest and kindly heart the advent of the war which he had hoped might not come in his day, and gladly hailed the earliest moment for making peace; and President Roosevelt has the same tireless energy in the work of concord that he displayed when he sought peace and ensued it on the field of battle. No presidents in our history have been so faithful and so efficient as the last two in the cause of arbitration and of every peaceful settlement of differences. I mention them together because their work has been harmonious and consistent.

We hailed with joy the generous initiative of the Russian emperor, and sent to the conference at the Hague the best men we had in our civic and military life. When the Hague court lay apparently wrecked at the beginning of its voyage, threatened with death before it had fairly begun to live, it was the American government which gave it the breath of life by inviting the republic of Mexico to share our appeal to its jurisdiction; and the second case brought before it was at the instance of Mr. Roosevelt, who declined in its favor the high honor of arbitrating an affair of world-wide importance.

It is not by way of boasting that I refer to these incidents; it is rather as a profession of faith in a cause which the administration has deeply at heart that I recall the course to which the American government is pledged and which it has steadily pursued for the last seven years. It is true that in those years we have had a hundred days of war—but they put an end forever to bloodshed which had lasted a generation. We landed a few platoons of marines on the isthmus in 1903, but that act closed without a shot a sanguinary succession of trivial wars. We marched a little army to Peking, but it was to save not only the beleaguered legations, but a great imperiled civilization. By mingled gentleness and energy, to which most of the world beyond our borders has done justice, we have given to the Philippines, if not peace,

at least a nearer approach to it than they have had within the memory of man.

If our example is worth anything to the world, we have given it in the vital matter of disarmament. We have brought away from the far east 55,000 soldiers whose work was done, and have sent them back to the fields of peaceful activity. We have reduced our army to its minimum of 60,000 men; in fact, we may say we have no army, but in place of one a nucleus for drill and discipline. We have three-fourths of one soldier for every thousand of the population—a proportion which if adopted by other powers would at once eliminate wars and rumors from the daily thoughts of the chanceries of the world.

But fixed as our tradition is, clear as is our purpose in the direction of peace, no country is permanently immune to war so long as the desire and the practice of peace are not universal. If we quote Washington as an advocate of peace it is but fair also to quote him where he says: "To be prepared for war is one of the most effectual means of preserving peace." And at another time he said: "To an active external commerce the protection of a naval force is indispensable. To secure respect to a neutral flag requires a naval force organized and ready to vindicate it from insult or aggression." To acknowledge the existence of an evil is not to support or approve it, but the facts must be faced.

Human history is one long, desolate story of bloodshed. All the arts unite in the apparent conspiracy to give precedence to the glory of arms. Demosthenes and Pericles adjured the Athenians by the memory of their battles. Horace boasted that he had been a soldier, *non sine gloria*. Even Milton, in that sublime sonnet where he said "Peace hath her victories no less than those of war," also mentioned among the godly trophies of Cromwell "Darwent's stream with blood of Scots imbrued." In almost every sermon and hymn we hear in our churches the imagery of war and battle is used. We are charged to fight the good fight of faith; we are to sail through bloody seas to win the prize. The Christian soldier is constantly marshaled to war. Not only in our habits and customs, but in our daily speech and in our inmost thoughts, we are beset by the obsession of conflict and mutual destruc-

tion. It is like the law of sin in the members to which the greatest of the apostles refers. "Who shall deliver us from the body of this death?"

This is the question for those who recognize the lamentable state of things and who yet do not accept it or submit to it, and who hope that through the shadow of this night we shall sweep into a younger day. How is this great deliverance to be accomplished?

We have all read that wonderful sermon on war by Count Tolstoi, in which a spirit of marvelous lucidity and fire absolutely detached from geographical or political conditions, speaks the word as it has been given him to speak it, and as no other living man could have done. As you read, with an aching heart, this terrible arraignment of war, feeling that as a man you are partly responsible for all human atrocities, you wait with impatience for the remedy he shall propose, and you find it is—religion. Yes, that is the remedy. If all would do right nobody would do wrong—nothing is plainer. It is a counsel of perfection, satisfactory to prophets and saints, to be reached in God's good time.

But the generation now alive may do something to hasten the coming of the acceptable day, the appearance on earth of the beatific vision. If we cannot at once make peace and good will the universal rule and practice of nations, what can we do to approximate this condition? What measures can we now take which may lead us at least a little distance toward the wished-for goal? We shall continue to advocate and to carry into effect, as far as practicable, the principle of the arbitration of such questions as may not be settled through diplomatic negotiations. We have already done much in this direction; we shall hope to do much more.

Unhappily, we cannot foresee in the immediate future the cessation of wars upon the earth. We ought, therefore, to labor constantly for the mitigation of the horrors of war, especially to do what we can to lessen the sufferings of those who have no part in the struggle. I make no apology for closing with a paragraph from the message which President Roosevelt sent to Congress in December, 1903:

"There seems good ground for the belief that there has been a real growth among the civilized nations of a sentiment



which will permit a gradual substitution of other methods than war in the settlement of disputes. It is not pretended that as yet we are near a position in which it will be possible wholly to prevent war or that a just regard for national interest and honor will in all cases permit of the settlement of international disputes by arbitration, but by a mixture of prudence and firmness with wisdom we think it possible to do away with much of the provocation and excuse for war, and at least in many cases to substitute some other and more rational method for the settlement of disputes. The Hague court offers so good an example of what can be done in the direction of such settlement that it should be encouraged in every way.

“Further steps should be taken. In President McKinley’s annual message of Dec. 5, 1898, he made the following recommendation:

“ ‘The experiences of the last year bring forcibly home to us a sense of the burdens and the waste of war. We desire, in common with most civilized nations, to reduce to the lowest possible point the damage sustained in time of war by peaceable trade and commerce. It is true we may suffer in such cases less than other communities, but all nations are damaged more or less by the state of uneasiness and apprehension into which an outbreak of hostilities throws the entire commercial world. It should be our object, therefore, to minimize, so far as practicable, this inevitable loss and disturbance.

“ ‘This purpose can probably best be accomplished by an international agreement to regard all private property at sea as exempt from capture or destruction by the forces of belligerent powers. The United States government has for many years advocated this humane and beneficent principle, and is now in a position to recommend it to other powers without the imputation of selfish motives. I therefore suggest for your consideration that the executive be authorized to correspond with the governments of the principal maritime powers with a view of incorporating into the permanent law of civilized nations the principle of the exemption of all private property at sea, not contraband of war, from capture or destruction by belligerent powers.’ ”



# A HUNDRED YEARS OF AMERICAN DIPLOMACY.

BY JOHN BASSETT MOORE.

[John Bassett Moore, authority on international law; born Dec. 3, 1860, at Smyrna, Del.; graduated from the University of Virginia, 1880; third assistant secretary of state, 1886; professor of international law and diplomacy in Columbia college, 1891; assistant secretary of state, 1898, and counsel to Peace commission, Paris; author of Reports on Extraterritorial Crime; Report on Extradition, History and Digest of International Arbitrations in 1898; one of the editors of the *Journal du Droit International Privé* and of the *Political Science Quarterly*.]

Over a century and a quarter ago the representatives of the United States of America, assembled in General Congress at the City of Philadelphia, declared that the thirteen United Colonies possessed, as free and independent states, "full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do." The period that has since elapsed, measured by the general duration of national life, is comparatively brief; but its importance is not to be estimated by length of years.

The United States came into being, as an independent nation, on the eve of great mutations in the world's political and moral order. The principles on which the government was founded were indeed not new; they had been proclaimed by philosophers in other times and in other lands; but they found here a congenial and unpreoccupied soil and an opportunity to grow. The theories of philosophers became in America the practice of statesmen. The rights of man became the rights of men. But the new nation, though conceived in liberty and dedicated to freedom, was practical in its aims and judicious in its methods. It also recognized the right to life, liberty and the pursuit of happiness as belonging to men not only as individuals, but also in their aggregate political capacity as independent nations. Adopting therefore as its rule non-intervention, it declined the proposal of the revolutionary government in France, in 1793, for "a

national agreement, in which two great peoples shall suspend their commercial and political interests, and establish a mutual understanding to defend the empire of liberty, wherever it can be embraced." Abstaining from active political propagandism, and acknowledging the right of other nations to work out their destiny in their own way, but confident of the beneficence and ultimate triumph of its own principles, it escaped the turmoils as well as the reactions that come of excessive and unregulated zeal, and, by the example of order and prosperity at home and the pursuit of an enlightened and consistent policy abroad, continued to uphold the cause of free government, free commerce and free seas. And it is in the maintenance of this great cause, in its various phases, that the United States has made its distinctive contribution to diplomacy.

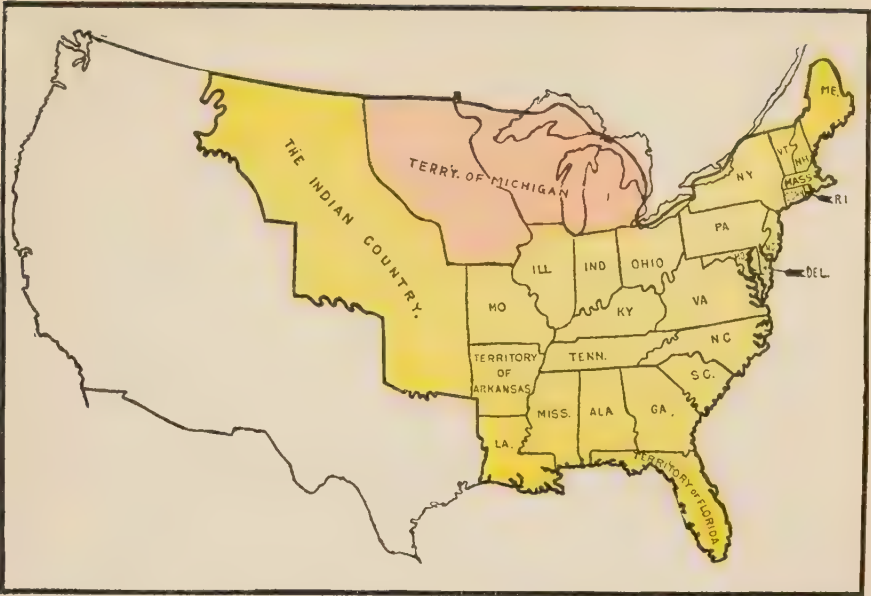
Although we are particularly concerned at present with the achievements of the past century, it will be necessary, in order to avoid an abrupt and misleading breach in the actual continuity of events, to recur to the acts of the great men who endowed our government with its original form and purpose. At the very outset they looked abroad with a view to enter into relations with other governments. Four months before the Declaration of Independence, an agent was sent to France by the continental congress with suitable instructions, perhaps not the least onerous of which was the injunction to acquire "Parisian French." Six months later the congress adopted a plan of a treaty. Comprehensive in scope and far-reaching in its aims, this remarkable state paper stands as a monument to the broad and sagacious views of the men who framed it and gave it their sanction. Many of its provisions have found their way, often in identical terms, into the subsequent treaties of the United States; while, in its proposals for the abolition of discriminating duties that favored the native in matters of commerce and navigation, it levelled a blow at the exclusive system then prevailing, and anticipated by forty years the first successful effort to incorporate into a treaty the principle of equality and freedom, on which those proposals were based.

Prior to 1789, the United States entered into fourteen treaties. Six of the fourteen were with France, but a majority of all were negotiated and signed in that country, at Paris or at Versailles. Eight were subscribed, on the part of the United States, by two or more plenipotentiaries; and among their names we find, either alone or in association, that of Franklin, ten times; Adams, seven times; Jefferson, three times; Jay, who shared with Adams and Franklin the burden of the peace negotiations with Great Britain, twice. These early treaties covered a wide range of subjects, embracing not only war and peace, but also political alliance, pecuniary loans, commercial intercourse, and the rights of consuls. Among their various stipulations, we may find provisions for liberty of conscience, for the abolition of the *droit d'aubaine* and *droit de traction*, and for the removal, generally, of the disability of the alien to dispose of his goods and effects, movable or even immovable, by testament, donation or otherwise. In one instance it is agreed that, if differences shall arise in consequence of an infraction of the treaty, no appeal shall be made to arms till a friendly arrangement shall have been proposed and rejected. Stipulations for the mitigation of the evils of war are numerous. A fixed time is allowed, in the unfortunate event of hostilities, for the sale or withdrawal of goods; provision is made for the humane treatment of prisoners of war; the exercise of visit and search at sea is regulated and restrained; the acceptance by a citizen of the one country of a privateering commission against the inhabitants of the other or their property, when the two contracting parties are at peace, is made piracy; and not only is contraband carefully defined, sometimes both positively and negatively, so as to limit its scope, but in the treaty with Prussia it is declared that no articles, not even arms and munitions of war, shall "be deemed contraband, so as to induce confiscation or condemnation and a loss of property to individuals," but that, if captured and taken, they shall be paid for at their full value, "according to the current price at the place of destination," while, if they are merely detained, compensation must be made for the loss thereby occasioned. In the same treaty there stood another

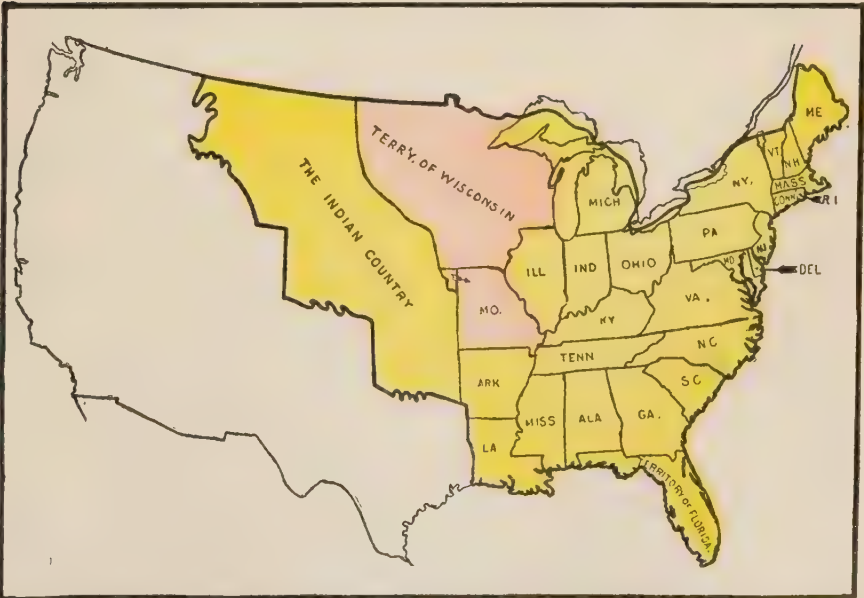








NO. 17.—1834. PORTION OF MISSOURI TERRITORY LYING NORTH OF THE STATE OF MISSOURI, EXTENDING NORTH TO CANADA LINE AND WEST TO THE MISSOURI AND WHITE EARTH RIVERS, ATTACHED TO THE TERRITORY OF MICHIGAN. REMAINDER OF THE MISSOURI TERRITORY DESIGNATED AS THE INDIAN COUNTRY.



NO. 18.—1836-1837. TERRITORY OF WISCONSIN FORMED FROM WESTERN PART OF THE TERRITORY OF MICHIGAN IN 1836, AND REMAINDER ADMITTED AS THE STATE OF MICHIGAN IN 1837. BOUNDARY LINE OF MISSOURI EXTENDED TO THE MISSOURI RIVER AT THE NORTHWEST CORNER OF THE STATE (1836).



clause, exempting all merchant and trading vessels from molestation in time of war. These clauses were far in advance of the international law of the time. They represented an aspiration; but, if intended also as a prophecy, they yet remain for the most part unverified and unfulfilled, though they are by no means discredited.

There is yet another thing for which we are indebted in no small measure to the men who laid the foundations of our system, and that is a certain simplicity and directness in the conduct of negotiations. Observant of the proprieties and courtesies of intercourse, but having, as John Adams once declared, "no notion of cheating anybody," they relied rather upon the strength of their cause, frankly and clearly argued, than upon a subtle diplomacy for the attainment of their ends. Nor did the framework of government subsequently adopted by them admit of the practice of secrecy and reserve, such as characterized the personal diplomacy of monarchs whose tenure was for life, and who were unvexed by popular electorates and representative assemblies. Hence, as it was in the beginning, so American diplomacy has in the main continued to be, a simple, direct and open diplomacy, the example of which has exercised a potent influence on the development of modern methods.

Soon after the organization of permanent government under the constitution, it became necessary to act upon two questions of foreign policy of more than ordinary importance. The first was that of recognizing the republic proclaimed in France by the national convention. The position of the United States on this question was defined by Mr. Jefferson, as secretary of state, in an instruction which has often been cited. "When principles are well understood," said Mr. Jefferson, "their application is less embarrassing. We surely cannot deny to any nation that right whereon our own government is founded, that every one may govern itself according to whatever form it pleases, and change these forms at its own will; and that it may transact its business with foreign nations through whatever organ it thinks proper, whether king, convention, assembly, committee,



president or anything else it may choose. The will of the nation is the only thing essential to be regarded."

In a word, the United States maintained that the true test of a government's title to recognition is not the theoretical legitimacy of its origin, but the mere fact of its existence as the apparent exponent of the popular will. This principle, though it necessarily found little support in Europe in 1703, has proved to be of the highest practical value; for not only has it continued to guide the course of the United States, but it has also become the generally accepted rule of international conduct.

The other great question was that of the course which the United States should pursue in the first general European war, growing out of the French revolution. In an early stage of that conflict, the government, after grave deliberation, resolved to preserve a neutral position. With this decision there began the great struggle concerning neutrality, whose concluding chapter may be found only in the treaty of Washington of 1871 and the arbitration at Geneva. The determination to be neutral involved both the maintenance of rights and the performance of duties; but neither the rights nor the duties of neutrality had ever been clearly and comprehensively defined. While publicists had laid down on the subject, with more or less doubt and hesitation, certain general principles, the practice of governments had been fitful and uncertain, and there existed no recognized standard of neutral obligations. The establishment of such a standard fell to the lot of the United States. Writing on June 5, 1793, to M. Genet, the French minister, who had, on his arrival in the United States, issued commissions to American citizens under which privateers were fitted out to prey on English commerce, Mr. Jefferson, as secretary of state, declared that it was "the right of every nation to prohibit acts of sovereignty from being exercised by any other within its limits, and the duty of a neutral nation to prohibit such as would injure one of the warring powers;" that "the granting of military commissions, within the United States, by any other authority than their own," was "an infringement on their sovereignty, and particularly so when granted to their own citizens, to

lead them to commit acts contrary to the duties they owe their own country;" and that "the departure of vessels, thus illegally equipped, from the ports of the United States," would be but an act of respect and was required as an evidence of neutrality. Somewhat later Mr. Jefferson informed M. Genet that the president considered the United States "as bound, in conformity to the laws of neutrality, to effectuate the restoration of, or to make compensation for, prizes which shall have been made of any of the parties at war with France subsequent to the 5th day of June last by privateers fitted out of our ports;" that it was consequently expected that he would "cause restitution to be made" of all prizes so taken and brought in subsequent to that day, in defect of which the president would consider it incumbent upon the United States "to indemnify the owners of those prizes, the indemnification to be reimbursed by the French nation;" and that, "besides taking efficacious measures to prevent the future fitting out of privateers in the ports of the United States, they will not give asylum therein to any which shall have been at any time so fitted out, and will cause restitution of all such prizes as shall hereafter be brought within their ports by any of the said privateers."

These declarations were amplified in a note to the British minister; and still later, in an instruction to Mr. Morris, then United States minister to France, Mr. Jefferson further declared "that a neutral nation must, in all things relating to the war, observe an exact impartiality towards the parties; that favors to one to the prejudice of the other would import a fraudulent neutrality, of which no nation would be the dupe; that no succor should be given to either, unless stipulated by treaty, in men, arms, or anything else, directly serving for war; that the raising of troops being one of the rights of sovereignty, and consequently appertaining exclusively to the nation itself, no foreign power or person can levy men, within its territory, without its consent; that if the United States have a right to refuse permission to arm vessels and raise men within their ports and territories, they are bound by the laws of neutrality to exercise that right, and to prohibit such armaments and enlistments." To ensure the enforce-

ment of these views instructions were issued by Alexander Hamilton, then secretary of the treasury, to the collectors of customs; and congress passed the first neutrality act, which forbade within the United States the acceptance and exercise by a citizen thereof of a commission, the enlistment of men, the fitting out and arming of vessels, the augmenting or increasing the force of armed vessels, and the setting on foot of military expeditions, in the service of any prince or state with which the United States was at peace. In due season compensation was made to British subjects, in conformity with the principles previously acknowledged, for injuries inflicted by French privateers in violation of American neutrality.

"The policy of the United States in 1793," says one of the greatest of English writers on international law, "constitutes an epoch in the development of the usages of neutrality. There can be no doubt that it was intended and believed to give effect to the obligations then incumbent upon neutrals. But it represented by far the most advanced existing opinions as to what those obligations were; and in some points it even went further than authoritative custom has up to the present day advanced. In the main, however, it is identical with the standard of conduct which is now adopted by the community of nations." But, upon the foundations thus surely laid, there was yet to be reared a superstructure.

The act of 1794, which was to remain in force for only a limited term, was afterwards extended, and was then continued in force indefinitely. An additional act was passed in 1817, but this, together with all prior legislation on the subject, was repealed and superseded by the comprehensive statute of April 20, 1818, the provisions of which are now embodied in the Revised statutes. An act similar in its prohibitions, though less effective in its administrative powers, was passed by the British parliament in the following year; laws and regulations were from time to time adopted by other governments; and the duties of neutrality became a fixed and determinate part of international law. The supreme test of the system, as the ultimate standard of national obligation and responsibility, was made in the case of the Alabama



claims, and was made successfully. By article 6, of the treaty between the United States and Great Britain, concluded at Washington, May 8, 1871, for the settlement of those claims, it was agreed that "a neutral government is bound:

"First—To use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or to carry on war against a power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use.

"Second—Not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

"Third—To exercise due diligence in its own ports and waters, and, as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties."

The British plenipotentiaries, by command of their government, declared that they assented to these rules as a means of strengthening friendly relations and of making satisfactory provision for the future, and not as a statement of the principles of international law which were in force at the time when the claims arose. Into this question it is unnecessary now to enter. At the present day the substance of the rules is uncontested.

The struggle of the United States for neutral rights originated in the same great European conflict as the controversy respecting neutral duties. By a decree of the national convention of May 9, 1793, the commanders of French ships of war and privateers were authorized to seize and bring in merchant vessels which were laden, either wholly or in part, with provisions, bound to an enemy's port, or with merchandise belonging to an enemy. The merchandise of an enemy was declared to be "lawful prize," but provisions, if the property of a neutral, were to be paid for, and an allowance was to be made in either case for freight and for the vessel's



detention. This decree, which was defended on the ground of a scarcity of provisions in France, ran counter to the views of the United States concerning the freedom of trade in provisions, and, so far as it affected American vessels, to the stipulation in the treaty between the two countries for the freedom of enemy goods on neutral ships. The operation of the decree was at one time declared to be suspended as to American vessels, but it was soon re-established, and subsequently other decrees, yet more injurious, were adopted. Meanwhile, the commanders of British cruisers were authorized to seize and bring in all vessels laden, wholly or in part, with corn, flour or meal, bound either to a port in France or to a port occupied by the French armies, in order that such corn, flour or meal might be purchased for the British government and the vessel released with an allowance for freight, or in order that the master might, on giving due security, be allowed to dispose of his cargo in the port of some country in amity with Great Britain. This order, as in the case of the French decree, was followed by others yet more obnoxious. Against all these measures the United States protested, both by word and by deed. From Great Britain a large pecuniary indemnity was obtained. The controversy with France, which involved many irritating questions, culminated in the state of limited war which prevailed from 1798 to 1800.

The respite which commerce enjoyed from belligerent depredations after the peace of Amiens was of brief duration, and the renewal of the war was ere long followed by measures which, though not wholly unprefigured, retain in the history of belligerent pretensions an unhappy pre-eminence. The British government, in 1806, in retaliation for a decree of Prussia excluding British trade, declared the mouths of the Ems, Weser, Elbe, and Trave to be in a state of blockade. Toward the end of the same year Napoleon declared the British Isles to be in a state of blockade, and all commerce and correspondence with them to be prohibited. Great Britain then issued an order in council forbidding neutral vessels to trade between ports in the control of France or her allies, and still later another forbidding them to trade without a clearance obtained in a British port, not only with

the ports of France and her allies, but also with any port in Europe from which the British flag was excluded. Napoleon's answer was the Milan decree, by which it was declared that every vessel that had submitted to search by an English ship, or consented to a voyage to England, or paid any tax to the English government, and every vessel that should sail to or from a port in Great Britain or her possessions, or in any country occupied by British troops, should be deemed good prize. These measures, with their bald assertions of paper blockades and sweeping denials of the rights of neutrality, the United States, as practically the only remaining neutral, met with protests, with embargoes, with non-intercourse, and finally, in the case of Great Britain, which was aggravated by the question of impressment, with war, while from France a considerable indemnity was afterwards obtained by treaty. The pretensions against which the United States contended are no longer justified on legal grounds. It is now universally admitted that a blockade, in order to be valid, must be actually maintained by a force sufficient to render access dangerous. The right of neutrals to trade with belligerents is acknowledged, subject only to the law of contraband and of blockade. The claim of impressment is no longer asserted.

With the claim of impressment was associated the question of visitation and search. It is conceded that the merchant vessels of the neutral nation may be visited and searched on the high seas in time of war by a belligerent cruiser for the purpose of ascertaining whether they are engaged in violating the laws of war, particularly in relation to contraband and blockade. The United States resisted the perversion of this right to other ends, and denied the existence, apart from treaty, of any right of search in time of peace. In 1858 the senate unanimously resolved "that American vessels on the high seas, in time of peace, bearing the American flag, remain under the jurisdiction of the country to which they belong, and therefore any visitation, molestation, or detention of such vessels by force, or by the exhibition of force, on the part of a foreign power, is in derogation of the sovereignty of the United States." "After the passage of this resolution,"

says Mr. Fish, "Great Britain formally recognized the principle thus announced, and other maritime powers, and writers on international law, all assert it."

While maintaining the freedom of the seas, the United States has also contended for the free navigation of the natural channels by which they are connected. On this principle it led in the movement that brought about the abolition of the Danish sound dues. An artificial channel necessarily involves special consideration, but, reasoning by analogy, Mr. Clay, as secretary of state, declared that if a canal to unite the Atlantic and Pacific oceans should ever be constructed, "the benefits of it ought not to be exclusively appropriated to any one nation, but should be extended to all parts of the globe upon the payment of a just compensation or reasonable tolls." This principle was approved by the senate in 1835, and by the house of representatives in 1839, and was incorporated in the Clayton-Bulwer treaty in 1850. It is also embodied in the Hay-Pauncefote treaty. It forms the basis of the treaty concluded at Constantinople in 1888, between the leading maritime powers of Europe, in relation to the Suez Canal.

Nor should we omit, in connection with the freedom of the seas, the subject of the free navigation of international rivers. This principle, consecrated in the acts of the Congress of Vienna, has been consistently advocated by the United States, and has been embodied in various forms in several of its treaties. Among these may be cited the treaty of 1853 with the Argentine confederation, conceding "the free navigation of the rivers Parana and Uruguay to the merchant vessels of all nations;" of 1858 with Bolivia, declaring the Amazon and LaPlata, with their tributaries, to be, "in accordance with fixed principles of international law, channels opened by nature for the commerce of all nations;" of 1859 with Paraguay, extending to "the merchant flag of the citizens of the United States" the free navigation of the Paraguay and Parana; and of 1871 with Great Britain, declaring the navigation of the rivers St. Lawrence, Yukon, Porcupine and Stikine to be "forever free and open for purposes of commerce" to the citizens of both countries.



While the struggle for neutral rights was in progress, the Spanish colonies in America began one after another to declare their independence. In this movement the United States instinctively felt a deep concern; yet the government, adhering to its policy of non-intervention, pursued a neutral course so long as the contest was confined to the original parties. But in time a new situation arose. In the summer of 1823 the continental powers of Europe, composing the Holy Alliance, having intervened to restore absolute government in Spain, gave notice to great Britain of a design to call a congress with a view to concert measures for putting an end to the revolutionary governments in Spanish America. At this time Lord Castlereagh, who was favorably disposed to the alliance, had been succeeded in the conduct of the foreign affairs of England by George Canning, who reflected the popular opposition to the policy of the allied powers. The United States, acting upon its principle that independence should be acknowledged when it is established as a fact, had then recognized the Spanish-American governments. Great Britain had not taken this step; but English merchants, like those of the United States, had developed with the countries in question a large trade which their restoration to a colonial condition would, under the exclusive system then in vogue, cut off and destroy. Canning therefore lost no time in sounding Mr. Rush, then United States minister at London, as to the possibility of a joint declaration by the two governments against the intervention of the allies in Spanish America. When this suggestion was reported, President Monroe hastened to take counsel upon it. The opinions of Jefferson and Madison were strongly expressed and altogether favorable.

In the cabinet, Mr. Calhoun, who also urged the importance of action, inclined to invest Mr. Rush with discretionary powers. Mr. John Quincy Adams, however, maintained that, as we had acknowledged the independence of the Spanish-American states, joint action could be taken only on that basis, and that the declarations of the two governments should therefore be made separately. This view prevailed. Canning, in fact, without awaiting the decision of the United



States, advised the French Ambassador, on the 9th of October, 1823, that while Great Britain would remain "neutral" in any war between Spain and her colonies, the "junction" of any foreign power with Spain against the colonies would be viewed as presenting "entirely a new question," upon which Great Britain "must take such decision" as her interests "might require." The announcement of the United States went further. President Monroe, in his annual message of December 2, 1823, declared that any attempt on the part of the allied powers to extend their system to any portion of this hemisphere would be considered as "dangerous to our peace and safety," and that any interposition by any European power in the affairs of the governments whose independence we had acknowledged, for the purpose of oppressing them or controlling in any other manner their destiny, could be viewed in no other light than as "the manifestation of an unfriendly disposition towards the United States."

In the same message there was another declaration, made with reference to territorial disputes on the northwest coast, that "American continents, by the free and independent condition which they have assumed and maintained, are henceforth not to be considered as subjects for future colonization by any European powers." These declarations, under the name of the Monroe doctrine, embody a cardinal principle of American diplomacy. As a protest against the political intervention of Europe and the extension of European dominion in this hemisphere, they found a ready lodgment in the hearts of the American people; and, thus interpreted and sustained, they still stand, as on memorable occasions they have stood heretofore, as a guarantee of the independence of governments and the freedom of commerce.

Mr. Adams in his meditations on the question of Spanish America, reasoned thus: "Considering the South Americans as independent nations, they themselves, and no other nation, had the right to dispose of their condition; we have no right to dispose of them, either alone or in conjunction with other nations; neither have any other nations the right of disposing of them without their consent." This principle, coeval with the American republic, has also been the guide of our policy

in the far East. Early on the scene in China, and the first to enter into treaties with Japan and Korea, the United States has steadfastly sought the preservation of their independence and territorial integrity, not only as a thing just and expedient in itself, but also as the logical foundation of the system of trade equality latterly denoted by the phrase "open door."

Especially is this true of those populous countries, China, and Japan, our interest in which is not lessened by the fact that they have, by our acquisition of the Philippines, become our near neighbors. Japan, coherent and aspiring, has at length been emancipated. China was uncertain until after the United States had obtained from the powers an engagement to observe throughout the empire the principle of commercial equality, its policy in the grave crisis that afterwards arose was expressed in the circular issued by the secretary of state. After stating the president's purpose to act concurrently with the other powers, in the immediate protection of American interests and the restoration of order, Mr. Hay in that circular declared that as to the future "the policy of the government of the United States is to seek a solution which may bring about permanent safety and peace to China, preserve Chinese territorial and administrative entity, protect all rights guaranteed to friendly powers by treaty and international law, and safeguard for the world the principle of equal and impartial trade with all parts of the Chinese empire."

In a sketch of American diplomacy during the past hundred years it is necessary to refer to the attitude of the government on certain questions that especially affect the rights of individuals. The Declaration of Independence enumerates, as among the "unalienable rights" with which "all men" are "endowed by their Creator," "life, liberty, and the pursuit of happiness." Whether these comprehended, incidentally, the right of the individual to renounce his allegiance at will, is a question on which opinions differed. The courts of the United States, prior to 1869, accepting the doctrine of the common law, generally sustained the negative; and the utterances of the executive department, even down to 1853,

were by no means consistent. Mr. Buchanan, however, as secretary of state, under the administration of Polk, broadly maintained the affirmative; and Mr. Cass in 1859 asserted that "the moment a foreigner becomes naturalized his allegiance to his native country is severed forever. He experiences a new political birth. Should he return to his native country he returns as an American citizen, and in no other character."

Congress in 1868 declared "the rights of expatriation" to be "a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty and the pursuit of happiness," and pronounced "any declaration, instruction, opinion, order or decision of any officers of this government which denies, restricts, impairs, or questions the right of expatriation," to be "inconsistent with the fundamental principles of this government." Prior to the passage of this act, George Bancroft concluded with the North German Union the first treaty of naturalization. He made similar treaties with Baden, Bavaria, and Hesse. Before the end of 1872, treaties on the same subject were entered into with Austria-Hungary, Belgium, Denmark, Ecuador, Great Britain, Mexico, and Sweden and Norway. No treaty has since been added to the list. This fact may be explained not only by an unreadiness on the part of various governments to accept a compliance with the naturalization laws of the United States as a sufficient act of expatriation, but also by the exigencies of military service and the numerous cases in which it has been alleged that the treaties were abused for the purpose of evading military duty.

In the development of the modern process of extradition, the credit of the initiative belongs to France. But, beginning with the Webster-Ashburton treaty, the United States, at an important stage in the history of the system, actively contributed to its growth by the conclusion of numerous conventions. We cannot afford, however, to rest on our laurels. In recent times other nations, and particularly Great Britain since 1870, observing the propensity of criminals to utilize improved facilities of travel, have, by legislation as well as negotiation, vastly increased the efficiency of the



system. It will therefore be necessary, if we would fulfill the promise of our past and retain a place in the front rank, steadily to multiply our treaties and enlarge their scope. No innovation in the practice of nations has ever more completely discredited the direful predictions of its adversaries than that of surrendering fugitives from justice.

The United States, acknowledging the force and supremacy of law, has given the weight of its example of the employment of arbitration as a means of settling international disputes not only as to the rights of individuals but also as to the rights of nations. If asked for a proof of this statement, we may point to the executed arbitral agreements to which, during the past hundred years, the United States has been a party, and to the cases in which the president, or some one appointed or approved by him, has acted as arbitrator or umpire. In many of these arbitrations questions of national right of the highest moment, sometimes expressed in the terms of the agreement, but often lurking in the general phrases of a claims convention, have been submitted to judgment.

We speak of the United States; and in its original design and purpose it still endures, and so may it endure forever. But, in the history of its diplomacy during the past hundred years, there is nothing more striking than the record of the national expansion. First Louisiana, then the Floridas, then Texas, next a half of Oregon, soon afterwards California and New Mexico, and later the Gadsden purchase, it was no mere figment of the poetic fancy that depicted the nation's pioneer as going

“joyful on his way,

To wed Penobscot's waters to San Francisco's Bay.”

Not only extensive provinces, which had “languished for three centuries under the leaden sway of a stationary system,” but also vast regions in whose wild solitudes the voices of nature spoke only to barbarian ears, were rescued from the dominion of misfortune and neglect, and dedicated to liberty and law and progress. And still the national advance continued. Distant Alaska, far reaching in its



continental and insular dimensions, was added to the national domain; the Hawaiian Islands, long an object of special protection, were at length annexed; and Cuba, as the events of the century had foreshadowed, was detached from the Spanish crown, while by the same act all other Spanish islands in the West Indies, together with the Philippines and Guam in the Pacific, were ceded to the United States. By a treaty since made, Germany and Great Britain renounce in favor of the United States all their rights of possession or jurisdiction as to Tutuila and certain other islands in Samoa.

The record of the century lies before us. We survey it perhaps with exultation, but we should not forget its graver meaning. With the growth of power and the extension of boundaries, there has come an increase of national responsibilities. The manner in which we shall discharge them will be the test of our virtue. To-day, reviewing the achievements of a hundred years, we pay our tribute to the wisdom, the foresight, the lofty conceptions and generous policies of the men who gave to our diplomacy its first impulse. It remains for us to carry forward, as our predecessors have carried forward, the great work thus begun, so that at the close of another century the cause of free government, free commerce and free seas may still find in the United States a champion.

# INFLUENCE OF THE MONROE DOCTRINE.

BY FRANCIS B. LOOMIS.

[Francis B. Loomis, assistant secretary of state of the United States; born July 27, 1861, at Marietta, O.; graduated from Marietta college in 1883; newspaper writer 1883-90; Washington correspondent 1887-90; United States consul at St. Etienne, France, 1890-93; American minister to Venezuela, 1897-1901; prominently associated with movement for promoting American commerce in South America; carried on negotiations for reciprocity and extradition treaties, and offered successful solution for a number of diplomatic questions; envoy extraordinary and minister plenipotentiary to Portugal, 1901-03; in 1903 was appointed assistant secretary of state of the United States; in 1905 official envoy to receive remains of John Paul Jones.] Copyright 1904 by American Academy of Political and Social Science

Consideration of the political position of the United States on the American continent must inevitably entail some discussion of the Monroe doctrine, for our attitude and interests have largely been evolved and determined by the development of this famous declaration. Fundamentally, the Monroe doctrine is our expression of the national right to self-defence. Sooner or later a doctrine or policy identical in spirit if not in form would have been enunciated even had Monroe and Adams never lived. The Monroe doctrine was not the result of one man's mind and effort, nor the development of one day or of one decade. It grew up slowly and expanded into vigorous being during the first quarter of the last century. The menace of the Holy Alliance and the fact that England's interest in combating its possible operations in the new world were identical with our own made necessary a strong expression from this country and gave to that pronouncement the power and prestige which it instantly achieved. The impending dangers which caused the promulgation of the Monroe doctrine passed away with the dissolution of the Holy Alliance. For many years little or nothing was heard of our so-called policy. When Polk invoked it in 1848 the danger of considerable European aggressions upon this continent had not for a long period caused serious apprehension. There was apparently no talk as there was no question of colonization in the new world by European

powers, nor any active attempt on their part to extend their political system to this continent.

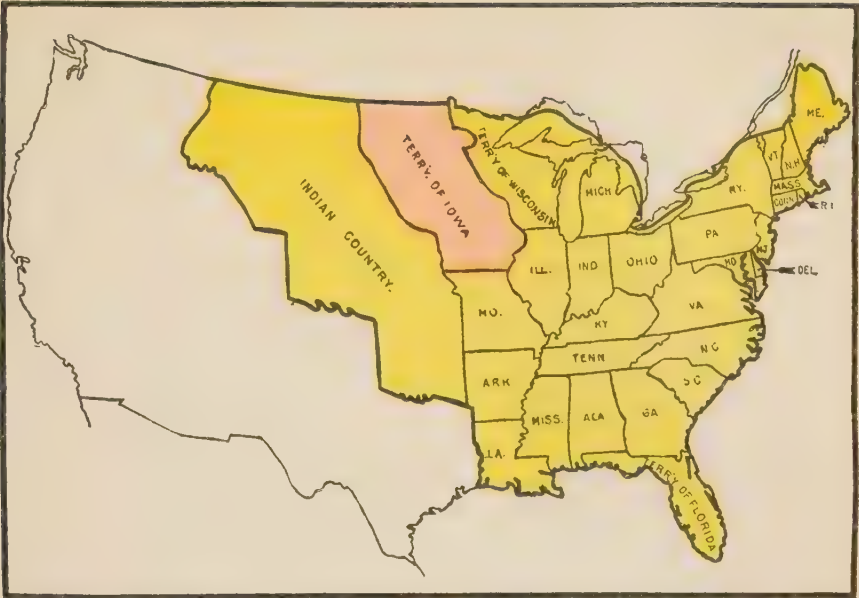
In his annual message of December 2, 1845, President Polk, referring to the dispute between this country and Great Britain as to the Oregon territory and to the possible intervention of European powers in consequence of our annexation of Texas, aimed to give to that paragraph of the doctrine dealing with colonization a meaning popularly but erroneously conveyed by the expression "no more European colonies on this continent," but in using it, he restricted its application to North America, saying that "it should be distinctly announced to the world as our settled policy that no future European colony or dominion shall, with our consent, be planted or established on any part of the North American continent."

It will here be seen that President Polk gave a new and extended meaning to Monroe's declaration against colonization. He pronounced against the establishment of any dominion on the North American continent by European power, a term which, of course, includes the acquisition of territory by voluntary transfer or by conquest of colonies or territories already occupied. Three years later President Polk reasserted his doctrine in a special message to Congress, called forth by an Indian depredation in Yucatan which led the authorities to offer to transfer "the dominion and sovereignty to the United States," and at the same time to make a similar offer to Great Britain and Spain. President Polk, in urging the occupation of the territory by the United States, declared that "we could not consent to a transfer of this dominion and sovereignty to either Spain, Great Britain, or any other European power." This presentation surpassed the Monroe doctrine in all of its parts. The Monroe doctrine was based upon the right of the American states, whose independence we had acknowledged, to dispose of themselves as they saw fit. It was directed against the interposition of European powers and aimed to control their designs against the new world. Mr. Adams, in his graphic, felicitous manner, expressed this notion in his diary, as follows:

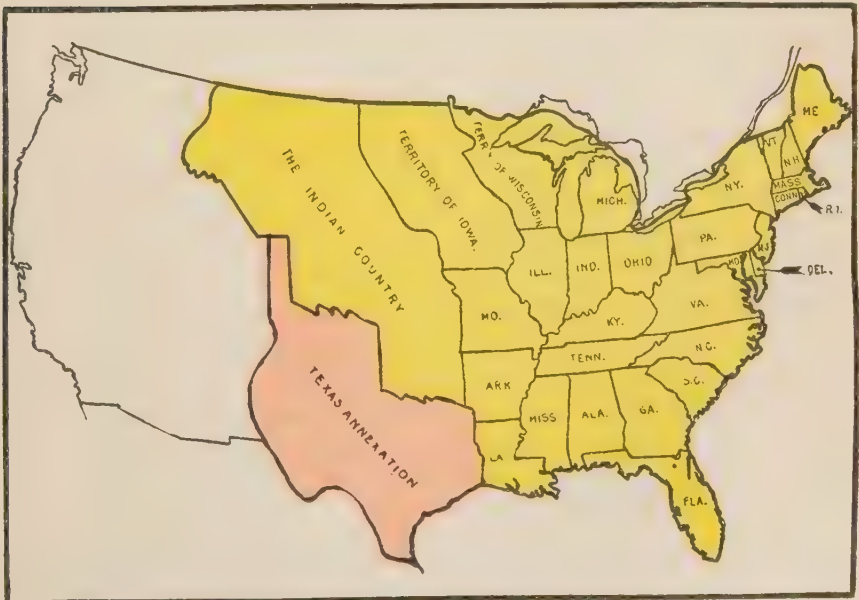








NO. 19.—1838. TERRITORY OF IOWA FORMED FROM PART OF WISCONSIN TERRITORY LYING BETWEEN THE MISSISSIPPI AND MISSOURI RIVERS.



NO. 20.—1845. TEXAS ANNEXED AND ADMITTED AS A STATE.



“Considering the South Americans as independent nations they themselves and no other nation had the right to dispose of their condition. We have no right to dispose of them, either alone or in conjunction with other nations. Neither have any other nations the right of disposing of them without their consent.”

The doctrine of President Polk, however, forbade the acquisition of dominion in North America, either by voluntary transfer or cession. It is obvious that President Polk, in invoking the Monroe doctrine in the sense in which he sought to apply it, was endeavoring to strengthen his position in respect to annexation which was formidably opposed in some sections of this country. That his attention and interest were centered upon this feature is indicated by the fact that in 1846 he abandoned his claim to the Oregon territory and agreed to a settlement of the boundary at 49 degrees instead of at the line of “54-40 or fight,” to which he had previously announced our title to be unquestionable.

The Monroe doctrine to-day gathers its strength as a vital American policy from the support and life which the power and efficiency of the United States breathe into it. It will have effect and command respect and be carefully considered and weighed just as long as we are in position to back it up with men and guns. This view is not lacking in historical support. In 1862-63, during the gloomy days of our civil war, when the energies of the government were centered in the desperate struggle for the life of the union, it became evident that France was preparing for activity in Mexico, and that her armies were being used to set up a monarchical form of government, contrary to the wishes and desires of the people of that country. It was not possible for us at that moment to go to war with France; hence we had to content ourselves with a rather mild protest against the aggressive act of the French emperor. A few years later, however—in 1865—the close of the great war of the rebellion left in this country two vast armies under the leadership of some of the foremost generals of the world. Owing to the fact that this formidable military force could easily have been turned against the invaders in Mexico, it took only a slight hint from Mr.



Seward, coupled with a mere allusion to the salient principles of the Monroe doctrine, to cause the immediate withdrawal of the imperial troops from the soil of Mexico, a step which speedily led to the collapse of the exotic monarchical government.

Again, during the period of our civil war certain Spanish politicians intrigued with the revolutionary party in Santo Domingo, and secured the offer of the queen of Spain of the sovereignty over that island. Our administration, while it deplored the action of the Spanish government, did not feel itself in position to make a strong or impassioned appeal to the Monroe doctrine, for it knew very well that we could not afford at that moment to quarrel with Spain over the sovereignty of Santo Domingo or any other island.

Mr. Seward said, in his instructions to Mr. Carl Schurz, then minister to Spain:

"You are authorized and instructed to call the attention of the Spanish government to the subject, and, in such manner as you can adopt without impropriety, urge the necessity of a prompt and satisfactory explanation."

Later our diplomatic representative at Madrid, Mr. Preston, protested in a strenuous fashion against the absorption of the Dominican republic by Spain. His note to the Spanish minister of foreign affairs deserves resurrection from the archives of the department of state. Said Mr. Preston to the Spanish minister of foreign affairs:

"The government of Her Majesty has declared the Dominican republic reincorporated with the monarchy.

"For forty years the government of the United States has avowed its determination to resist any attempt to re-establish monarchical power over the republics of the new world, believing it essential to their independence and prosperity as well as to the interests and just rights of the United States to leave them free from all such intervention. It has always declared its intention to show a sacred regard for the remaining possessions of the European powers in America, and it has faithfully fulfilled that pledge. It made this declaration when Spain was torn by civil war and unable to defend her possessions in America against external force or

ambition, and it was then acquiesced in as a rule of justice and a welcome evidence of our friendship. It has manifested its sincerity by effective efforts to repress hostile expeditions against Cuba, and by letting its citizens perish in silence because they attempted to violate the rights of Spain. It has equally resisted any claim on the part of England, though under the color of ancient treaties, to establish any protectorate, found any new colony, or annex new territory in Central America.

"Spain, well knowing this policy, has constantly declared to the United States that it had forever abandoned all thoughts of re-establishing its power over its former possessions in America.

"Rumors having reached the government of the United States that designs existed for the re-annexation of Santo Domingo and Mexico, by means of intrigues with factions in those countries, the undersigned, in October last, demanded from the government an explanation and received the most satisfactory assurances that no thought was entertained of reconquering or re-establishing the power of Spain over her former dominions in America.

"Even within the last month your excellency assured me of the surprise felt by the government of Her Majesty at the events in Santo Domingo, though now, by the exposition of the council of ministers, which precedes the decree, it appears that the measure has been long meditated and designed, and that Her Majesty, strongly moved by the wishes of the people of Dominica, has only been prevented from yielding to their desire by overpowering reasons of state.

"The exposition of the council of ministers does not specify what the reasons of state are which restrained the government of Spain for so many years in refusing to yield to the wishes of the people of Dominica and the queen, but the coincidence of events shows, and the exposition of the ministry admits that they were of overpowering force for many years while my country was strong, rich, and united, and have utterly disappeared within the last month since it has been unhappily involved in civil war.

"The government of the United States felt that from its neighborhood, its commerce, and its power it had a just right to make such demands and receive such assurances.

"England, from its right of vicinity, based upon its possession of Gibraltar, recently demanded and required that Spain, before she would be permitted to make war upon Morocco, should give assurances that no conquest or objectionable annexation of territory should be made. Your excellency yielded to the demand and fulfilled the promise. The commerce of the United States in the gulf of Mexico is greater by far than that of England in the Mediterranean, its territory indefinitely more vast, and its just right to intervene for the protection of its material interests more direct. We have received assurances equally satisfactory, but within this month they have been utterly violated.

"The annexation of the island professes to be in conformity with the will of the people, and upon this the exposition chiefly relies for support. The facts are that the Spanish troops and vessels were present simultaneously with the declaration of President Santana that the island was transferred to Spain, and that even now the government will have to send half as many troops as there are male inhabitants in the republic to quell the civil war which has broken out to resist the transfer of the republic by its chief. Still greater evils must ensue from the inevitable conflict with the people of Haiti, and the whole island will soon be subjected to the horrors of war. An act to annex the island under such circumstances, after an interval of eighteen days without the recognition of the revolution by any other power—a revolution in which the governors betray the governed and extinguish the government in utter violation of their trust—is termed an evidence of the free and spontaneous will of the people and the result of their unawed suffrages.

"Under these circumstances the undersigned, as the representative of the government of the United States, protests against the seizure of the Dominican republic by Spain and informs your excellency that his government will consider itself free to resist the measure by all the means at its



command, considering that Spain does not hold the island by the free will of its people, but only occupies it without just right by military force. The government of the United States will never consent that Spain shall re-establish her dominion over the republics of the new world by supporting factions or parties within them or attempting to control their destiny. The undersigned declares that his government will never regard the republic of Dominica as a lawful acquisition by Spain, but a mere hostage, betrayed by its friends and seized by a former master, to be released hereafter by any generous hand whenever fortune presents an opportunity.

"The undersigned will communicate the final resolutions of Her Majesty's government to the government at Washington, but a proper sense of the interest and honor of his country compels him to withdraw from Spain until its course of action is decided."

Mr. Seward, on the same subject, addressed this language to the Spanish minister in Washington:

"The president would not willingly believe that these proceedings have been authorized by your [government], and . . . I inform you in a direct manner that if they should be found to have received the sanction of that government the president will be obliged to regard them as manifesting an unfriendly spirit toward the United States and to meet the further prosecution of enterprises of that kind, in regard to either the Dominican republic or to any part of the American continent or islands, with a prompt, persistent, and, if possible, effective resistance."

It will thus be seen that our representative at Madrid was fully alive to the exigencies of the situation and that he acted with energy and promptness. He was not, however, sustained with equal vigor by the administration, and it does not appear that his note and his action received more than perfunctory approval at Washington. This can be readily understood, for the war cloud, with all its fury, had burst over this country and no one was disposed to give immediate heed to Spain or her operations in Santo Domingo. Before the time arrived in which we were prepared to demand satisfactory explanations from Spain another revolution occurred



in the Dominican republic and a democratic form of government was re-established.

Probably the most startling appeal to the Monroe doctrine was that made by President Cleveland in the case of the boundary dispute between Venezuela and England. There are, of course, two strongly conflicting opinions as to the wisdom of our course in invoking the Monroe doctrine in the Venezuela boundary case. The view which generally obtained abroad concerning President Cleveland's message was that it was not justified. It was held that England was not trying to control the destiny of Venezuela nor endeavoring to establish new colonies there.

Many persons in this country thought the point at issue was simply a boundary dispute involving questions of geography and history and leading possibly to an ultimate change of ownership of tropical lands sparsely settled and likely to remain so, while it was assumed abroad that Mr. Cleveland expected both parties to the boundary dispute to accept his suggestions concerning arbitration.

Our government at that time seems to have held that through unjust or arbitrary modification of the boundaries of its colonial possessions on the American continent a European state might seriously curtail the territory of an American republic and in this manner gravely affect its destiny.

I do not think it was maintained by Mr. Cleveland or Mr. Olney that Great Britain would be bound to acquiesce in the decision regarding Venezuela's eastern boundary line which the commission appointed by himself might reach. "The sole purpose of that commission," says a partisan of Mr. Cleveland's course, "was to enlighten the conscience of our executive and the American people at large touching the Venezuelan question; whether the British occupation of territory was, as the Venezuelans alleged, purely arbitrary, or whether it was founded in international law and equity. Had the commission reported in favor of the British claim, the United States would have declined to assist Venezuela in repelling British aggression. Only in the event of the commission finding the British claim unfounded should we have

felt it our duty to say that Great Britain must choose between arbitration and war."

It may be of interest at this point to note what leaders of modern thought in Europe think of the Monroe doctrine in general and of its application to the Venezuelan boundary case in particular. A distinguished French jurist and writer has recently published a book in which he formulates what plainly is the view of Continental Europe in respect to this country and its interpretation of Monroe's policy.

Referring to the Venezuelan boundary dispute he declares that, in this connection, the Monroe doctrine had no bearing; that it had no more concern with the matter at issue than has theology with a question of mathematics. He thinks the enthusiastic reception of President Cleveland's message by a majority of the American people was a wholly ridiculous spectacle, and from the point of view of an international lawyer he finds the state of affairs at the meeting of the Paris tribunal of arbitration to be quite beyond comprehension. The treaty of arbitration, says the author, was an intervention between two states, one of which, it is useless to deny, had no reason whatsoever to figure in the question of arbitration. "It was a discussion of territory under the sovereignty of Venezuela and not under that of the United States. Yet the treaty was made between the latter country and England. In this manner the United States availed itself of a means and a vehicle of justice to put into execution an intervention which was absolutely illegal."

"The precedent," Dr. Pétin declares, "is very important in that it forces Europe to accept arbitration in the adjustment of boundary lines with American states and marks an ominous advance in the development of the Monroe doctrine." The stand taken by the United States in the Anglo-Venezuelan affair, it is extravagantly asserted, if consistently sustained, morally binds the United States to protect all American states and to act as arbitrator, and it is just one more step along this line of development, declares the French author, for the United States, in pursuance of the new interpretation of the Monroe doctrine, to drive European powers entirely out of America. And indeed this last step was taken,

the critic thinks, when the United States decided upon intervention in the Cuban war. He naturally shares the continental view of that struggle and is wholly unable to credit the disinterestedness of the United States in espousing the cause of the Cubans, although he is compelled to acknowledge, after much scathing criticism of our course, that legally we had a right to interfere on grounds of humanity. As an outcome of the Cuban war, the acquisition of the Philippines is denounced by the critic as a bold stroke on the part of the United States, beyond the pale of all law and beyond the most extreme application of the Monroe doctrine. Yet in fairness he makes the acknowledgment that the results of the so-called American aggression have been in the interests of good government and of humanity.

Since the days of the Panama congress our French critic sees in the course of the United States and its interpretation of the Monroe doctrine little beyond an exhibition of the utter selfishness of this country. He says the smaller American states were early given to understand that not only were they to abandon all idea of receiving assistance and protection from the United States, but that they might even fear oppression from this country itself.

He finds in the attitude of the United States toward Yucatan a further emphatic example of this new phase of the Monroe doctrine. "In denying to Yucatan the right of its people to dispose of themselves the United States flagrantly violated the principles of international law, and from the early policies of Monroe, 'America for the Americans,' President Polk developed a policy of 'America for the North Americans!'" "

I have quoted this last paragraph because it illustrates in a clear and truthful way the opinion respecting the United States and its ultimate purposes held by an intelligent, alert, but small minority in several of the Latin-American countries. This view was made unpleasantly apparent at times during the Spanish-American war, and there seemed to be, in places, a determined effort to create in the minds of uninformed people the fear and belief that the United States meant to set forth upon a policy of conquest which



would involve the absorption of all the weaker nations on this hemisphere.

It is just to say, however, that in no instance was this ridiculous, though somewhat widespread, notion ever put forward, sustained, or suggested by any South or Central American government.

"Polk," continues the eminent French critic of the Monroe doctrine, "denied the right of a people to dispose of themselves. All of his successors, imbued with these same ideas, have applied the new doctrine in the same sense, making all bow before the egoistic interests of the United States. The doctrine thus transformed admits of no other interpretation. Just as in ancient times everything gave way before the Roman citizen, and in later times before the British subject, so now must everything give way before the citizen of the United States. In the first two instances imperialism holds sway and in the last Monroeism. To control the economic keys of the world is imperialism; to grasp the economic keys of America is Monroeism. The only difference in the two policies lies in the extent of their respective application. The limit of imperialism is the universe; the limit of Monroeism is America. The Spanish-Cuban war gave the people of the United States great advantages. Their victories transformed them into a greater power. The conference of the Hague did even more. It recognized the Monroe doctrine. And without raising the question of the contradiction between the policy of imperialism pursued in the Philippines and the policy of Monroeism declared at the conference of the Hague, Europe permitted the United States to proclaim, once for all, 'the world and America for the Americans!'"

This exposition of the Monroe doctrine which I have just quoted will seem extreme and even fantastic, as no doubt in a sense it is, but nevertheless it represents a view of us and of our policy which is widely entertained, and as such must be considered and soberly reckoned with. To me it seems more and more essential, as our intercourse with other nations grows, and as our interests more closely touch and affect their interests, that we should earnestly strive to comprehend fully the point of view of every other independent nation upon



international matters. It is of importance to know what Europe thinks of the Monroe doctrine and the new meaning given to it from time to time.

The Monroe doctrine is not international law, and we have never claimed that it was. It is the fervent expression of an American policy—one that has grown to be part of the life and thought of the nation. Its strength lies, to a considerable extent, in its flexibility and in the wisdom which causes us to refrain from attempting to define it with precision and to draw it within specified metes and bounds. One sentence of President Monroe's message is still a good deal pondered throughout the civilized world. It is this: "But with the governments who have declared their independence and maintained it and whose independence we have, on great consideration and on just principles, acknowledged, we could not view any interposition for the purpose of oppressing them or controlling in any other manner their destiny by any European power in any other light than as the manifestation of an unfriendly disposition toward the United States." The phrase "for the purpose of oppressing them" may involve much of potential danger. Divers constructions are put upon it, and it is scanned from many points of view. We say it means what it says, or, more precisely, that it conveys the meaning which was given it by Monroe and his colleagues when the message was written. To many thoughtful men south of us it means, or seems to mean, quite another thing. Certain Latin-American statesmen, men of much erudition and keen intellectual insight, construe this phrase to mean that no coercive measures may be exercised by European or other countries for the purpose of compelling payment of just debts of any sort. Their view of this phase of the Monroe doctrine is held more generally than is supposed. It has very lately been made the basis of important diplomatic correspondence between this country and one of the foremost republics of South America, a republic which, like several of its neighbors, is progressive, liberal, prosperous, and orderly, and which does not seek to evade any just obligations. President Roosevelt has declared upon more than one occasion with admirable lucidity and emphasis that we will not shield

any nation from the consequences of wrongdoing. This is his answer and the answer of the American government and people to the suggestion that it is a violation of the Monroe doctrine to employ force against an American republic for the purpose of obtaining respectful consideration of just debts or of redressing real grievances. The only limitation which we put upon this expression is that there shall be no attempt on the part of the coercive power to acquire or permanently to control in any way the territory or destiny of an American republic. There was nothing in President Monroe's declaration to warrant anyone, so far as I can see, in inferring that when he spoke of the oppressing of American governments he referred to the collection of debts. Professor J. B. Moore says the idea that the employment of force to collect debts was contrary to the Monroe doctrine has its origin in Wharton's *International Law Digest*. In the section entitled "Monroe doctrine" the following sentence occurs:

"The government of the United States would regard with grave anxiety an attempt on the part of France to force by hostile pressure the payment by Venezuela of her debt to French citizens."

The authorities cited for this statement are two alleged instructions written by Mr. Blaine to our minister at Paris in 1881. The whole matter, however, is incorrectly stated. Both instructions are published in the volume of foreign relations for that year, and they refer not to hostile pressure, but to a rumored design on the part of France of taking forcible possession of some of the harbors and a portion of the territory of Venezuela in compensation of debts due to citizens of the French republic, and nowhere occurs the erroneous paragraph cited, nor is mention made of the Monroe doctrine. The instructions merely urge that such a proceeding as that reported to be in contemplation would be unjust to other creditors of Venezuela, including the United States, since it would deprive them of a part of their security, and they express the solicitude of the government of the United States "for the object of averting hostilities between two republics for which it feels the most sincere and enduring friendship." It is plain, observes Professor Moore, that this conception of

the Monroe doctrine, based upon the erroneous passage in Wharton's Digest, has no actual foundation whatever; and he takes occasion to state in this connection that the British proceedings at Corinto in no way involved either the Monroe doctrine or President Polk's interpretation of it. We have never undertaken to say that European powers should not settle their differences with the American republics by the use of force any more than we ourselves would abjure the right to employ it in extreme cases. In 1861 we made no objections to the demonstrations of the allies against Mexico for the purpose of collecting debts until it became evident that France had an ulterior purpose in her intention, namely to establish a monarchical form of government.

In 1842 and 1844 Great Britain established a blockade of the port of San Juan, Nicaragua, and in 1851 she put an embargo on the traffic of the port of La Union in Salvador, at the same time declaring the whole country in a state of blockade. In 1862 and 1863 Great Britain seized Brazilian vessels as an act of reprisal. The ports of Mexico were blockaded in 1838 by France to obtain redress for unsatisfied claims. In 1845 ports on the coast of Buenos Ayres were blockaded by France and Great Britain for the purpose of bringing about the independence of Uruguay. For many years, beginning in 1865, Spain was at war with republics on the coast of South America, and the city of Valparaiso was fiercely bombarded by a Spanish fleet. A United States man-of-war in 1831 attacked and dispersed a pirate colony from Buenos Ayres on the Falkland Islands and set at liberty some of four citizens who had been arrested and detained there for killing seals on the coast. In 1846 we went to war with Mexico; and in 1854 the commander of one of our men-of-war bombarded Greytown, and as a result secured an indemnity of \$24,000 for the seizure and destruction of property, and obtained an apology for an insult to the American minister on the part of some of the inhabitants of the place. After the bombardment, in order to inculcate a lesson never to be forgotten, the naval commander burned all the buildings that were left standing. In 1859 we sent an expedition to obtain redress from Paraguay. In 1890, while the Pan-



American conference was in session, congress passed an act to authorize the president to use force to collect a claim from Chile, and two years later we sent to that country an ultimatum to which she gave due heed.

A French publicist professes to see in President Roosevelt's speech at Chicago of April 2, 1903, a further extension of the Monroe doctrine. Attention is directed by the French writer to the word "control" as used by the president when he says "the acquisition of any control is really equivalent to territorial aggrandizement." The French view is that a serious dispute may arise as to the construction to be put upon the seizure of custom houses of one of the debtor nations by the naval or military forces of a European power for the purpose of assessing or collecting fines or securing payment for just debts long overdue, and concerning which no satisfaction whatsoever can be obtained by ordinary and peaceable methods. It seems not to be generally understood that before Germany and England recently decreed a blockade of Venezuelan ports they sent an ultimatum to Venezuela, moderate in tone, offering to submit all doubtful and unadjudicated claims to arbitration. This request for arbitration, made in good faith, brought forth an evasive answer, an answer that has been made in substance many times before to similar representations, and one in which the element of straightforwardness was said to have been absent. England and Germany did not seize the custom houses, refraining from this course, to some extent no doubt, in deference to our attitude and wishes. At least nothing bearing a resemblance to territorial occupation occurred.

Had a number of the custom houses been seized temporarily and moneys collected for the purpose of paying indemnities imposed by the allies as redress for grievances, no objection could have been taken to such a course by our government. The Monroe doctrine would not have been violated. But had the allies in Venezuela attempted to hold custom houses, until all foreign claims of whatsoever nature had been satisfied and paid from customs receipts, it is quite safe to say that there might have resulted a good deal of



popular anxiety in this country and very keen interest on the part of the government itself.

As money is thought to be the root of all evil, so it is one of the mainsprings of governmental activity, and no country can long exist without it. If a European nation, or a number of European nations acting together, were to take over and administer the customs and finances of a Latin-American country, contrary to the desire and will of its government, it would not require keen foresight to predict that in a few months the destiny of the country whose customs were being administered through foreign interposition would be in a large measure controlled by the agents of the alien creditors. In this wise, then, there might be evolved a situation fraught with danger to the peace of the world and full of menace to the spirit of the Monroe doctrine.

But we cannot deepen the meaning nor widen the scope of the Monroe doctrine without proportionately increasing our own responsibilities. The time may ultimately come when we shall have either to abandon some of our views respecting the Monroe doctrine or fight for them, and if I read aright the present disposition of the American people they will be slow to abandon any position they have taken in their international policy. Therefore, it behooves us to consider the Monroe doctrine in our most serious vein and to examine with scrupulous care every indication pointing to a change in its application and interpretation.

The future is pregnant with embarrassing possibilities. Up to the present time we have been too busy to do more than to guess at the potential dangers that confront us. Our government wisely attempts to cross no bridges before it reaches them. Yet its leaders scan the horizon and they are not blind to some of the problems the future may hold. Suppose, to make concrete a single example, the recently much-discussed Acre territory, between Brazil and Bolivia, had been strong enough firmly to establish an independent government; suppose, then, the people of that state had invited one of the continental powers to send a governor-general to rule it as a colony, or as a protected state under the dominion of a European monarch; suppose, too, that the people of

Acre, or a very large majority of them, ardently desired this transfer of sovereignty or dominion, and that it were to take place. What then would be the position and attitude of the United States?

Take another example: Suppose Venezuela, under the stress of poverty, were to sell or lease for a large and wholly satisfactory price the island of Marguerita to France for a period of ninety years, would we maintain that Venezuela was not within her sovereign rights in selling or alienating a portion of her territory if she so chose? Or, leaving Venezuela, let us suppose, if you please, that some more potent Latin-American nation decided to lease important islands or harbors to European powers for naval or coaling stations, and we determined to resist the execution of the lease, sale, or transfer. Should we not, in all probability, find our pretensions vigorously combated by two armed foes, each denying, from different points of view, our right to invoke the Monroe doctrine? Even these briefly suggested examples suffice to illumine the wide field of danger that may open before us when we shall attempt radically to alter the present meaning, scope or force of the Monroe doctrine.

You are doubtless aware that at this moment there is in the United States a small but earnest band of opponents to the idea of further extension of the Monroe doctrine. This opposing point of view can not justly be excluded from a serious and honest consideration of the subject as a whole, no matter how little one may be in sympathy with it. Those who describe themselves as opponents of the Monroe doctrine profess to think the formulated policy of Monroe, as such, has had its day; they believe that no European country harbors the smallest design of obtaining sovereignty over any part of Central or North America, and that there is nowhere any disposition to interfere with republican government in the new hemisphere. In short, the disciples of this school sincerely believe that we are in as little danger from European aggression as Europe is in danger of attack from the United States. They declare, and not without reason, that the democratic form of government is more likely to spread throughout Europe than is monarchical government to gain

a foothold in the new world. So they say, "Let us abandon the Monroe doctrine in so far as it means anything more than our inherent right to self-defence and preservation; let us leave our neighbors south of the Caribbean sea to their own defence and destiny; let us not be a dog in the manger and try to prevent the development and settlement in South America of great colonies by European immigrants."

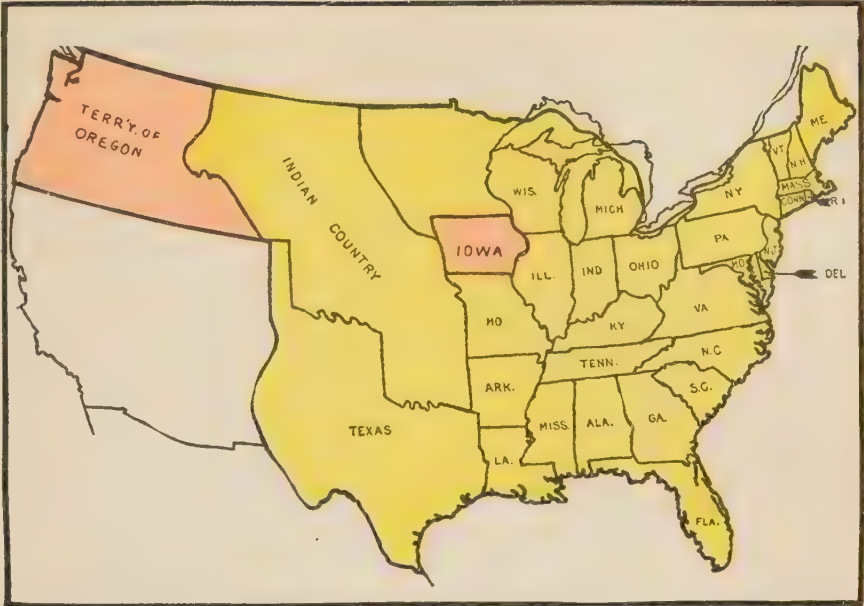
It is eloquently urged that enormous advantages would accrue to our commerce and export trade in South America were those countries to receive in the next twenty-five years ten or fifteen millions of settlers or colonists from the old world. South America is thinly peopled. Nearly a century of fierce domestic warfare has impoverished several of its countries and repelled both foreign immigration and foreign capital. In consequence of this unhappy condition, which in some instances shows no signs of favorable change, the progress of certain of these countries is arrested, civilization halts, and the reign of bloodshed and anarchy continues. Their markets to-day are of slight importance to the world, because there is little money with which to buy and few people to make purchases. Let Holland, England, Germany or other European countries have free access to South America and enough control merely to secure peace and careful administration of the government finances, then countries that have for centuries been given up to devastating war will be transformed into vast producing and consuming communities. Foreign capital and immigrants would pour into them; their vast resources would be developed; the soil, the forests, the mines, the pastures and prairies, the power of the great waterfalls, would all be utilized; new and mighty markets for the surplus products of the factories and farms of the United States and Europe would be created; and, better than all this, the people would rise to a new life—they would be uplifted, redeemed and regenerated by the irresistible genius of established peace and its concurrent civilization.

Is not this our course of action, it is asked? "Would it not be better for all concerned were we to follow these lines? Why leave these people to walk in darkness? Why interpose the Monroe doctrine between them and this vision of a sub-

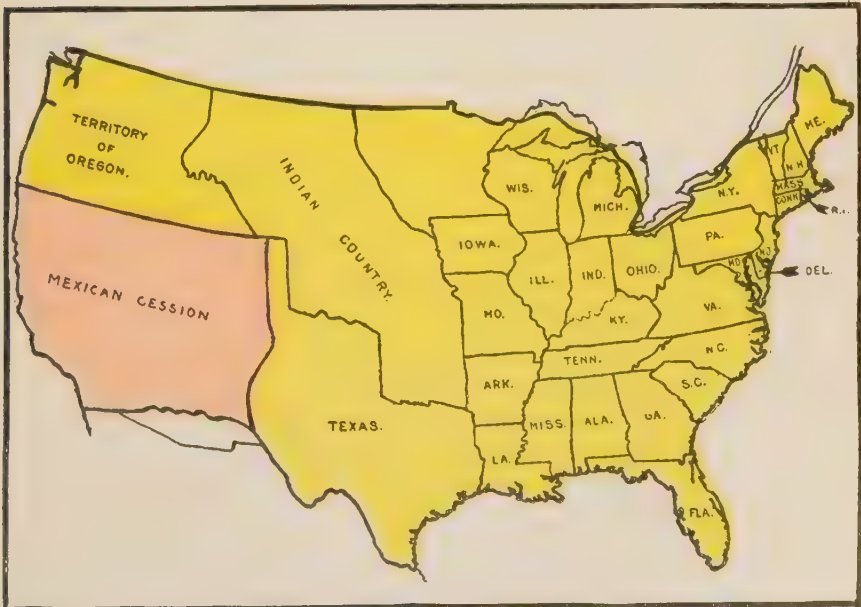








NO. 21.—1846. STATE OF IOWA FORMED FROM SOUTHERN PART OF IOWA TERRITORY. CLAIM OF UNITED STATES TO OREGON TERRITORY SETTLED BY TREATY WITH GREAT BRITAIN, TERMINATING JOINT OCCUPATION BY UNITED STATES AND GREAT BRITAIN, FOLLOWED BY IMMEDIATE WITHDRAWAL OF LATTER.



NO. 22.—1848. NEW MEXICO AND CALIFORNIA CEDED TO UNITED STATES BY MEXICO ON PAYMENT OF \$15,000,000 AND ASSUMPTION OF \$3,250,000 CLAIMS OF AMERICAN CITIZENS AGAINST MEXICO.



stantial and splendid destiny? Why subject for another century the unhappy people of certain countries, a majority of whom would welcome any government that promises stability, to the desperate existence they now lead under the dominion of military dictators? Why maintain the deplorable sham and shadow of republican government, when we all know that the reality never even existed? It has been a mere pretense from the beginning; the people have never governed themselves. They have been misgoverned in spite of themselves. We are proposing to make greater the Monroe doctrine for the sake of republics which in reality do not exist and which every intelligent man knows do not exist. Is it not about time to end the farce? What has our attitude of benevolent protection and our long effort at cultivating warmer and closer relations with certain of our sister republics accomplished for the world and for humanity?

"What is the record of desirable, specific achievement? No one affirms that we have made life sweeter or better worth the living in any of the Latin-American countries. We have not caused order to prevail nor the arts and sciences to flourish. We have not caused settlers to come, the forests to be conquered, nor the soil to be tilled. Judged by our standard of living and education, some of these republics are just where they were centuries ago, when the Spaniard ruled them for his own profit and pleasure."

This is the iconoclastic view of the Monroe doctrine, and I daresay we shall hear more of it. The people who hold it would have the United States government police parts of Central America and, in a military and naval sense, the Caribbean Sea, and then give no further heed whatsoever to the world south of its uttermost shores. Let us be paramount, with due regard to our neighbors in Mexico and Canada, from Alaska to the equator, and then let us think no more about South America and its relations to the rest of the world, say the opponents of the Monroe doctrine.

In spite of the reasons set forth by Americans and Europeans who think this government ought to abandon the Monroe doctrine, or at least to modify its application, this old policy seems more firmly intrenched in the hearts of the people of the



country to-day than it ever was, and nowhere is there evidence of immediate or widespread change of attitude respecting it.

Our position is described at times as paramount or supreme on this hemisphere, and in a commercial sense at least we may without vanity affirm this to be true. There is no doubt about our power and the place we occupy among the nations of the new world any more than there is about the respect we command in the councils of the old world; but fortunately our position of supremacy on this hemisphere does not rest wholly upon military power or possible exhibitions of force. The policy of the United States, its attitude toward the Latin-American republics, is one of helpfulness and kindly interest. Our rule of action in respect to them is, as Mr. Hay has happily said, the golden rule. We have been generous, tolerant and sympathetic in the past, and we intend to pursue this line of conduct in the future. We have responded cordially to appeals from certain countries upon more than one occasion. We have spent many millions of dollars in protecting our own citizens in turbulent countries. We have, following the dictates of humanity, given asylum to many distinguished Latin-American citizens, rescuing them from political foes, and we have sheltered and protected hundreds of helpless women and children and transferred them on our war vessels to ports of safety. We have chartered harbors, made expensive soundings, and established buoys in the interest of navigation, and we have endeavored to improve sanitary conditions in many ways and in many ports. From some of the citizens in these countries we have received encouragement, assistance, intelligent appreciation and cordial approval.

On behalf of a southern republic we flung down a challenging gauntlet before one of the mightiest nations the world has known, and volunteered to take the risk of war with its dire consequences at a time when we were ill prepared for defensive or offensive operations. The outcome, however, was fortunate in that instead of a retrograding war the progressive principle of arbitration was evoked and further strengthened.

These things that we have done show our good-will and our unselfish purposes. We have respected the law and sovereignty of every government when it was possible to do so. We have tried to help those who are our friends in Central and South America, and who wanted our help, to become strong and efficient commonwealths. We want them to attain great prosperity and power. We wish all of our neighbors well, and we want them to be plenteously endowed with the blessings of peace. No republic to the south of us can become too rich or too self-sustaining to suit the kindly purposes of this country. We want everywhere the spirit of genuine liberty to be alive among the people. We want to feel that they are profiting by what is good, noble and true in our national life. In this sense we hope to be paramount. We want all of the American republics to know that honest toil is dignified and ennobling. We want them to entertain a spirit of toleration in all matters and to understand that in union there is strength, and to know, too, that the genius of our civilization is individual development and endeavor. We want the ideas of civil and religious liberty and free education to have wide scope and abundant appreciation. We desire all of our Latin-American friends heartily to join us in supporting, urging, and vitalizing the principle of international arbitration.

In these peaceful ways we may endeavor to Americanize the new world and perhaps the old, not by the conquering power of the almighty dollar, not by manifestations of force, but rather by the dissemination of those lofty, civilizing agencies, those great principles, those fine ideals, those spiritual forces upon which our country was founded and upon which it has lived and had its being.

## ENTRY OF THE UNITED STATES INTO WORLD POLITICS AS ONE OF THE GREAT POWERS.

BY SIMEON E. BALDWIN.

[Simeon E. Baldwin, judge of Supreme Court of Errors of Connecticut; born February 5, 1840, New Haven, Conn.; educated at Yale and received the degrees of A.M. and LL.D. from Harvard; lawyer in New Haven until appointed judge; professor of constitutional law at Yale; author of Connecticut Digest, Cases on Railroad Law, Modern Political Institutions as co-author, and in 1901 of Two Centuries' Growth of American Law. The following article is from the Yale Review, to which Judge Baldwin is a frequent contributor.]

The great powers are a small family. They always must be, for the great are few. It was until recently a provincial family. It called itself the great powers of Europe.

The United States have now elbowed their way into it. It is no longer Great Britain, France, Austro-Hungary, Germany, and Russia. There is no room in the circle for Italy. The big boy who was hulking in the background, until the last few years, has changed his voice and come forward to claim his own. He proposes henceforth to have his full part in the game of Weltpolitik, and he will, by the right of the stronger. His welcome has not been of the warmest. Germany, particularly, has been cold in her reception of the new member. If one is to believe her daily press, the United States have come in as a power necessarily antagonistic to all the rest,—as America against Europe. But be this as it may, the great powers are now the great powers of the world. It is seen that they may have to enlarge their circle some day to take in powers of Asia. Japan already has a title for the next vacancy. China, reconstituted, revived against its will by Western civilization, may, in this new century, assert her right to a place in line.

American diplomacy, until our war with Spain, had followed in the main the course laid down in Washington's farewell address. There had been but one substantial departure from it. That was the promulgation of the Monroe doctrine.

But the Monroe doctrine, which a happy accident of European politics made it possible for us to assert, was confined in its immediate scope to American affairs. We justified it by the rule of self-preservation.

It was, however, an edged tool which Canning put thus into our hands in 1823. Great Britain would have been slow to suggest our setting up what was so near to an American protectorate, had she foreseen even the possibility of such an incident as the Venezuelan controversy of 1895.

That, more than any other thing in our previous history, advanced us to a new place in the world. A nation was to be feared that dared, without any immediate motive of personal interest, to put herself in the path of England and intimate an intention to hold the ground.

Some of the dispatches which emanated from our state department at that time indicated, perhaps, that we had not yet been a great power long enough to acquire all the company manners of the society into which we were entering. The contrast between the brusque tone in which our secretary of state emphasized our interest in Venezuela's claims and the suavity with which the queen, in her speech at the opening of the next parliament, acknowledged the friendly tender of the good offices of the United States towards a satisfactory adjustment of the controversy, was marked. Indeed, an American dispatch of the last few months may be open to a similar criticism. The South African republics had requested from the United States "intervention," as they phrased it, in their behalf, and this request was communicated by our secretary of state to Great Britain, together with the expression of the hope of the president that a way to bring about peace might be found, and his readiness "to aid in any friendly manner to promote so happy a result." What we thus did being in pursuance of a request for intervention, and the request having been made by reference part of our dispatch, we might, perhaps, have been considered as intimating the possibility of our taking such a step. The reply from the British foreign office was better phrased. It thanked the president for "his friendly interest" (thus treating our action as meant to be friendly to Great Britain), while stating



explicitly that "her Majesty's government could not accept the intervention of any other power."

The United States, so far as they had engaged in world politics up to the date of President McKinley's first administration, had done so as idealists. They had acted with no immediate view of national aggrandizement.

Our participation in the Pan-American congress of Panama, in 1826, sprang from a desire, to use Jefferson's words, "to make our hemisphere that of freedom." In that of 1890, at Washington, we were seeking to substitute arbitration for the never-ending succession of revolutions and political assassinations which constitute the public annals of the South American republics.

Our conventions for the suppression of the slave trade, and the erection of international courts for that purpose, were solely founded on sentiments of humanity.

But wealth necessarily brings new powers and new responsibilities. There is, as Goethe said, a dignity in gold. Our national growth in numbers and riches gradually and inevitably was forcing us into closer relations with foreign courts. Our commercial establishments in Samoa had brought us in 1890 into a tripartite convention with England and Germany, in the nature of a protectorate. Those at Hawaii were fast drawing us towards annexation. Our ministers plenipotenentiary at the great capitals had been replaced by ambassadors.

New occasions for American participation in foreign affairs were also furnished by the spread of Christian missions.

It was the American missionary that brought us into such close relations with Hawaii. He created a market for our goods. His children, as they grew up there, became the governing power.

Our share in the recent conflict with China was largely, though more remotely, due to what our citizens have done to propagate Christianity there; and there is no other cause for the strained relations between the United States and Turkey which led to the practical withdrawal of our minister from Constantinople in 1899. In 1901 the Presbyterian Board of Foreign Missions applied to the president for the dispatch of a man-of-war to protect American interests in the New

Hebrides, where the Christian natives, who numbered about a quarter of the population, were threatened with a war of extermination.

Under the influence of all these forces, the United States were being gradually driven into a more active participation in the business of the world, when it was precipitated by the events of the Cuban insurrection. Still, our controversy with Spain was in its first beginnings idealistic. We were actuated by sentiments of humanity, sympathy, and brotherhood. It shocked us to see year after year of bloodshed and rapine pass unchecked, almost within sight of the coast of Florida. At last, in 1897, in the same plain, outspoken (shall we say blunt?) way which we had pursued with Great Britain in regard to the Venezuelan difficulty, we notified Spain that order must be soon restored in Cuba, or we might feel obliged to intervene and restore it ourselves. It was to be, to quote the language of President McKinley's first annual message, "intervention on humanitarian grounds"; it was to be rested on "a duty imposed by our obligations to ourselves, to civilization and humanity."

The destruction of the Maine in the harbor of Havana was the real parting of the ways for the American people, as to their foreign policy. It aroused a passion for revenge, which for the time put the sentiment of humanitarianism almost out of mind. Dr. Chalmers wrote a great sermon on "The Expelling Power of a New Affection." There was no room here, in the spring of 1898, in the heart of the people for any other thought, as regarded Spain, than that she must be made to suffer for a crime which, if she had not committed, her misgovernment had made possible. She denied all responsibility for what had occurred, and offered to submit the matter to arbitration. Eight years before, Congress, by concurrent resolution, had requested the president "to invite from time to time, as fit occasions may arise, negotiations with any government with which the United States has or may have diplomatic relations, to the end that any differences or disputes arising between the two governments which cannot be adjusted by diplomatic agency may be referred to arbitration, and be peaceably adjusted by such means." We did

not concur with Spain in thinking this "a fit occasion" for resort to such a mode of adjustment. She made her proposal on March 31, 1898. No reply to it was made by our government, but on April 11th the president sent in his message recommending armed intervention. In ignoring the overture for arbitration, he probably spoke the wishes of the country. Right or wrong, the American people, at that moment, preferred the use of force. A notice to quit Cuba was given Spain on April 28th, and we then drove her out of the West Indies altogether, with the strong hand.

The course of the war took our navy to the Philippines, and here rose the first great landmark of our entrance into world politics. We captured a great city. We found ourselves under obligations to protect large property interests belonging to citizens of neutral powers. Spain was soon at our mercy. What terms of peace should be prescribed? We concluded to adopt the rule of *uti possidetis*. In truth, the war had wakened the tiger in us. It was our first real taste of blood; it gave us, that is, our first conquests. The Mexican war had resulted in large purchases of territory, but we can hardly call our acquisition of Porto Rico or the Philippines anything but spoils of victory, notwithstanding the twenty millions provided for in the treaty of cession.

With Manila an American port, our relations with China became necessarily closer. She, on the other hand, looked with little favor on the passing of the Philippines from the possession of a weak power to that of a great one, already insisting on the policy of the open door. The Chinese grew impatient of the dominance of the foreigner. The legations were besieged, and an American army was soon on its way to their relief.

Meanwhile, the Hague conference had done its splendid work. Here, from the first, the United States found their new station in the world fully recognized. One of their ambassadors headed their delegation, and was accorded an influence second to almost none. No one can read the clear and full account of the doings of this conference, for which the public are indebted to Mr. Holls, without observing the



weight which was justly attached to whatever fell from the representatives of the United States.

The Hague convention as to the settlement of controversies between nations by mediation, commissions of inquiry, or arbitration, has done much to smooth our way in dealing with foreign affairs. It delegates the *droit de force* to a secondary place as a rule of practice for the world. We can offer mediation, join in commissions of inquiry, go before an international court, as easily as any power. But unable as we are to wage war, save in self-defence, except by a special act of congress, we are almost disqualified from becoming a great military power.

In fact the United States go into their new world-field hampered at more than one point by having a written constitution, to which every act of the administration must be conformed. The great aim of those who framed it was, as to foreign powers, to provide for "the common defence." It is a coat of armor, capital for resisting sword thrusts, but of no help in giving them. It weighs us down at every step.

The executive authority in most governments determines its foreign policy and acts with little control from courts or legislatures. It acts, therefore, with promptitude, decision and secrecy. Our president is bound to refer many matters in this field to the senate, and the senate has become, in course of time, by the addition of new states, too large to fulfill properly the functions of a privy council. It lacks most of the essential qualities of such a body. It is little but a brake, and what is done and said in its executive sessions is too often to be learned from the next day's newspapers.

Nor are some of our constitutional limitations less embarrassing in time of peace, when we come to deal with the results of war.

No one can read the message of President McKinley at the opening of the second session of the fifty-sixth congress, without being struck with the space given—and unavoidably given—to the explanation of our foreign relations. The queen of Great Britain, a few days later, sent in a similar communication to parliament. It had to do with a costly war, not yet concluded, and as to the mode of concluding



which public sentiment was divided. But her speech was one of a single sentence. She asked supplies, and reserved to herself the consideration of all other questions. It was not necessary to take parliament into her confidence. It was necessary for President McKinley to take congress into his.

But something more was necessary. Even the assent of congress to such measures as he might suggest would not make them law. They must square with this same written constitution; and every individual, native or foreigner, had the right to question their conformity to it before the courts, should he claim that they affected his interests injuriously.

When the president's message was sent in, cases were already before the Supreme court of the United States in which the validity of his action in matters arising in Porto Rico, Hawaii, and Cuba had been challenged. Can a Filipino be tried for crime except by a jury of twelve men? Can he be tried at all for any grave offence without being first indicted by a grand jury of eighteen men? Questions like these involve, at bottom, the power of the United States to hold and govern permanently lands acquired from a foreign power and inhabited by a half-civilized people. We cannot govern such men by Anglo-Saxon methods of administering criminal justice. If our constitution requires that, we must draw off and leave them to govern themselves or cede the lands to some other power. We must, that is, if we conform to the original spirit of our constitutional guaranties.

Written constitutions, however, are the subject of a certain growth, and what their framers meant by the words they used is never absolutely controlling upon their construction by posterity. Gouverneur Morris is responsible for much of the language of the constitution of the United States. But it is more important what the people of the different states understood this language to signify, than what it meant to him. They, in ratifying the work of the constitutional convention of 1787, took the words put before them as they stood, without asking particularly what might have been the intention of the members of the convention in employing them. In the interpretation of any legal document the cardinal rule must be to give its terms their natural meaning,

notwithstanding a more restricted or a more unlimited one may have been really intended by the writer.

Chief Justice Marshall applied this doctrine with great force in the Dartmouth college case. If the college charter constituted a contract between the founders and the state, the legislative action which Webster was attacking must be held void. But, urged counsel who opposed him, no one in the convention of 1787 ever dreamed that a charter was a contract; nor did a single man among those by whose votes the constitution was ratified and adopted.

"It is more than possible," said the chief justice, "that the preservation of rights of this description was not particularly in the view of the framers of the constitution, when the clause under consideration was introduced into that instrument. It is probable that interferences of more frequent recurrence, to which the temptation was stronger, and of which the mischief was more extensive, constituted the great motive for imposing this restriction on the state legislatures. But although a particular and a rare case may not, in itself, be of sufficient magnitude to induce a rule, yet it must be governed by the rule, when established, unless some plain and strong reason for excluding it can be given. It is not enough to say, that this particular case was not in the mind of the convention, when the article was framed, nor of the American people, when it was adopted. It is necessary to go farther, and to say that, had this particular case been suggested, the language would have been so varied as to exclude it, or it would have been made a special exception. The case being within the words of the rule, must be within its operation likewise, unless there be something in the literal construction so obviously absurd, or mischievous, or repugnant to the general spirit of the instrument, as to justify those who expound the constitution in making it an exception."

By emphasizing certain of its terms, and minimizing others, great changes from anything which the framers of that instrument can reasonably be supposed to have contemplated, have, in the past century, been wrought by the people and sanctioned by the judiciary. More of this work, no doubt, is yet to be done in the same way.

The powers of the president of the United States have been steadily growing, ever since that great office was created, at the expense of those of the legislative and judicial departments. They will continue to grow, as new occasions for their exercise arise; first because the yearly multiplication of federal law is constantly enlarging their subject, and second, because he is the only representative in our system of government of the whole American people, and speaks in a certain sense with their authority.

A single instance will suffice to illustrate this tendency.

Some ten years ago a man was arrested on a warrant from a proper magistrate of one of our states on a charge of murder. He had, in fact, killed another, but claimed to have done it in the exercise of his duty as a deputy marshal of the United States, in order to save the life of one of the judges of the United States from a felonious attack. If so, he had a perfect defence in the courts of the state, should he be brought to trial there before a jury. Instead, however, of abiding such an issue, he secured a summary discharge from a federal judge upon a writ of habeas corpus. The executive department, it was held, in virtue of the general obligation of the president to "take care that the laws be faithfully executed," had implied power to surround the judiciary with armed guards, whenever and wherever there was just reason to apprehend attack, and no state could hold them to account for what they might do in its defence.

As the president is invested with the entire "executive power" of the United States, and as it is the executive power of a nation which must maintain its communications with other countries, he has always been the real director of our foreign policy. Having the initiative, it has been easy for him to place us in a certain position, to commit us to a certain line of conduct, from which it was practically impossible to recede. Recognized as having the sole means of authentic intelligence as to the doings of other nations, his recommendations as to legislation affecting our relations to them carry the greatest weight. Irresponsible to congress, and practically irremovable from office, he can give the fullest force to his own individual ideas of right and duty.



These attributes of the president make us fitter than most republics to play the part of a great power in large questions of diplomacy.

The veto of the senate on the treaty making power puts, indeed, an obstacle in the way of prompt action, and often of salutary action, which necessarily impairs the consistency of our foreign policy. But this has become of less importance since the constitutional changes, of late years, through which treaties involving important interests are now, in many other countries, made subject to ratification by legislative action. The world has become patient of popular opposition to measures of administration.

It is also easy for an administration to forestall any unfavorable reception of a treaty by the senate, in most cases, by a little management. If the chairman of its committee on foreign relations is consulted in advance by the secretary of state, and kept informed of the progress of negotiations, he will be very apt to give his support to whatever is brought forward as the outcome; and his voice in such a matter is likely to control.

There would be inconvenience, if not danger, in thus taking a particular senator into the confidence of the president, should it ever come to be practiced as a thing of course. It would raise up a new office in the government. The chairman of this committee would become another secretary of state, and should he differ in opinion with the rightful holder of that position, collisions might occur which can never arise so long as we adhere to the constitutional theory of the executive power,—that it is one and indivisible.

It has been suggested that the absence of any such previous consultation was one of the reasons for the recent action of the senate on the Hay-Pauncefote treaty respecting the Isthmian canal. If it in fact was thus regarded by Senator Davis or Senator Lodge as the deprivation of a customary privilege, the defeat of the administration was better for the country than anything that could be gained from a vote of ratification. The president cannot be too vigilant in guarding his high prerogatives. Unless kept absolutely intact, the balance of the constitution is disturbed, and an inroad made



upon our scheme of government at the point of least resistance.

Had the senate always remained the body of twenty-two men which it was originally, the president might have continued the practice of our early administrations, and taken a personal part in their executive sessions. But even then he could not safely have made one or two, as of right, his confidants in advance. His individual responsibility would have been lowered, and cabals would have been a natural result.

The great enlargement of the senate intensifies these reasons for maintaining at this point the absolute independence of the executive department. So, even more strongly, does our entry into world politics. It is a change of position, which, as has been pointed out by Professor Reinsch of the University of Wisconsin, necessarily endangers one of the unwritten and yet one of the strongest safeguards of the constitution.

This is the existence of an organized and effective opposition in both houses of congress.

The constitution provided explicitly, in one instance, for the support of such a minority, by requiring the yeas and nays to be taken and recorded upon any vote, at the request of a fifth of those present. This protection to them has in part been taken away in the house of representatives, of late years, by the closure rule. Their continued existence, or at least their healthy vitality, will be henceforth threatened by the opportunity which the party in power will always have, when maintaining a policy of foreign war or conquest, of appealing to patriotic feeling and raising the cry of "our country, right or wrong." The political press, during the recent presidential campaign, did not hesitate to denounce those who went by the name of "anti-imperialists" as the main supporters of Aguinaldo, and to assert that the speeches in congress of those who denounced the military measures directed against him were prolonging his resistance to our lawful authority, and that they were responsible for bringing hundreds of our soldiers in the Philippines to untimely graves.

There is an absorbing interest in great national events of world-wide interest, in wars and rumors of wars, in conquests

of new lands, in the framing of governments for subject races, in joining with other powers in imposing fundamental political changes on distant empires, that dwarfs all the ordinary questions of home concern. As to those, men who differ can speak out with little fear of misconstruction or misrepresentation. On questions of foreign policy, when what is said in congress is forthwith telegraphed to every quarter of the globe, public men are under a certain compulsion to speak with reserve and hesitancy.

For the proper treatment of foreign questions, the freest discussion is a necessity. We are accused by the Germans of a contempt for international law and treaty obligations, when they stand in the way of national aggrandizement, for which they have even coined a word, "Americanismus." The tone of many of our newspapers, and the language attributed to some of our senators during the discussion of the Hay-Pauncefote treaty, give some color to the charge. It certainly, however, has not yet fastened on the American people. It never can, if political discussion in congress is kept free and earnest on party lines.

In 1901 the house of representatives in Missouri surprised the country by adopting this resolution:

"Whereas, the sympathies of the American people go out to all nations and all peoples struggling for liberty; therefore, be it

Resolved, That the house of representatives of the forty-first general assembly of Missouri extend sympathy to the people of the Philippine archipelago in their heroic struggle for freedom."

The vote by which this action was passed (of 75 to 47) indicates that it received the support of one party, and was opposed by the other. Such an expression of opinion on the part of the legislative authorities of a state was, of course, beyond their proper province, irrespective of the grave objections to its form and nature; but the incident tends to illustrate one saving characteristic of American politics. There will always be some states in which the party represented by the national administration will be in the minority, and there the fullest discussion and the freest action is assured.

It is fortunate that the traditions of the senate have thus far preserved in that branch of congress the right of speech without limitation of time. Its character as an assembly of the representatives of sovereign states demands this. The minority in the senate can therefore always be more outspoken than that in the house, independently of the effect of their longer tenure in office.

The check upon the foreign policy of the administration furnished by the power of the senate to amend or reject treaties, which, now that we are one of the great powers, the president will often find inconvenient in matters where concerted action is to be taken, is not supported by any right of abrogation. A treaty, under our constitution, is a law, and can only be set aside by another treaty, or by act of congress. No other treaty can be proposed, save by the president. No repealing statute can be passed without his consent, unless it secures votes of two-thirds of each of the two houses. This gives him a far greater assurance than the heads of most republics have possessed, in dealing with foreign courts.

Nor has the senate in its capacity as a treaty-ratifying body, been always unwilling to assent to an extension of the president's authority in new directions.

A marked instance of this was the ratification, in 1900, of the Hague convention as to international arbitration.

This document was the work of a conference of sovereigns and individual representatives of sovereignty, acting through their respective plenipotentiaries. It pledges the signatory powers to certain lines of conduct and clothes them with certain functions.

In most of our treaties and conventions with foreign nations, "the United States of America" have been named as the contracting party, though the term is often treated as equivalent to "the president of the United States." The Hague convention names only the president. He is the contracting and signatory power.

It provides for mediation, and the authority to offer or accept it in behalf of the United States is necessarily in the president. It provides for international commissions of inquiry to be constituted "*par convention spéciale entre les*



parties en litige." Who is to make such an agreement on the part of the United States? Obviously the president. It provides for an international court of arbitration, and that "Chaque Puissance Signataire désignera, dans les trois mois qui suivront la ratification par elle du présent Acte, quatre personnes au plus," as members of this court. How has this appointment been made in behalf of the United States? In president McKinley's message at the opening of the second session of the fifty-sixth congress, we find these words: "In accordance with article XXIII. of the convention, providing for the appointment by each signatory power of persons of known competency in questions of international law as arbitrators, I have appointed as members of this court, the Hon. Benjamin Harrison of Indiana, ex-president of the United States; the Hon. Melville W. Fuller of Illinois, chief justice of the United States; the Hon. John W. Griggs of New Jersey, attorney-general of the United States, and the Hon. George Gray of Delaware, a judge of the Circuit court of the United States." This was communicated simply as a piece of information. He did not ask the consent of the senate. Why should he? The president must seek it, under our constitution, when he appoints ambassadors, public ministers, and consuls, judges of Supreme court, and most other officers of the United States. But the members of this international court are not officers of the United States. They are officers of a world court.

Similar action had been often taken by our presidents in appointing arbitrators under previous treaties made for the purpose of settling some particular controversy.

The day must soon come when the United States will have occasion to invoke the action of this court. What will be our procedure? Article XXIV. of the convention provides thus for it: "Lorsque les Puissances Signataires veulent s'adresser à la Cour Permanente pour le règlement d'un différend survenu entre elles, le choix des arbitres appelés à former le tribunal compétent pour statuer sur ce différend, doit être fait dans la liste générale des membres de la Cour.

A défaut de constitution du tribunal arbitral par l'accord immédiat des parties, il est procédé de la manière suivante:—



Chaque partie nomme deux arbitres et ceux-ci choisissent ensemble un surarbitre.

En cas de partage des voix, le choix du surarbitre est confié à une Puissance tierce, désignée de commun accord par les parties.

Si l'accord ne s'établit pas à ce sujet, chaque partie désigne une Puissance différente, et le choix du surarbitre est fait de concert par les Puissances ainsi désignées.

Le tribunal étant ainsi composé, les parties notifient au bureau leur décision de s'adresser à la Cour et les noms des arbitres."

The successive acts thus contemplated on the part of a moving party are of an administrative character, and it must fall to the president to perform them.

But what is to be submitted to the arbitrators for determination? By article XXXI., "Les Puissances qui recourent à l'arbitrage signent un acte spécial (Compromis) dans lequel sont nettement déterminés l'objet du litige ainsi que l'étendue des pouvoirs des arbitres. Cet acte implique l'engagement des parties de se soumettre de bonne foi à la sentence arbitrale." Following the line of reasoning heretofore pursued, it is difficult to escape the conclusion that the president is to settle the terms of the subject in controversy and the extent of jurisdiction conferred, and by his sole agreement to pledge the faith of the United States for the fulfillment of the award,

This is a tremendous power for a republic to lodge in one man's hands; but in matters less important not dissimilar functions had been entrusted to him, or to his executive agents, in previous instances.

Thus in 1871 a convention was made with Spain to refer to arbitration certain claims of citizens of the United States against her for injuries received at the hands of the Cuban authorities. One arbitrator was to be appointed by the secretary of state of the United States, and one by the Spanish minister at Washington; these two to agree on an umpire. "Each government" was to name an advocate, and the "government of the United States" was to present the claims in controversy; the awards to be final and conclusive. The attorney-general advised that the president was the govern-

ment for the purpose of naming our advocate, such an official being considered as "of a peculiar nature created by the agreement between the two powers."

The president, or the state department, would, of course, in any case of this kind, be compelled, in presenting a claim, to define it; that is, to define the subject to be determined by the joint commission.

Our convention of 1828 with Great Britain, for the adjustment of the northeastern boundary by arbitration, provided that each party should prepare and submit such a statement of its case as it should think fit. It needs no argument to show that to state our case, that is our claims, for this purpose, must have been meant to be purely and finally a matter for the president; yet according as it was drawn, so might the boundary be established. The Behring sea convention of 1892 contained similar provisions. Such is indeed almost the necessary procedure in all international arbitrations.

In 1883, we made a convention with Mexico for the better demarcation of boundaries. "Each government" was to appoint certain persons, headed by a chief engineer, to constitute together an "international boundary commission" with power to set monuments at such points as might be agreed on by the two chief engineers. By "government" was here plainly meant the proper executive power in each republic.

By an act of congress passed in 1872, the postmaster-general, "by and with the advice and consent of the president, may negotiate and conclude postal treaties and conventions." This has been done in repeated instances, and is, of course, in substance, the negotiation and execution of an agreement with a foreign power by the president, without asking the concurrence of the senate, or rather by virtue of their consent given in advance. The statute in terms, indeed, purports to delegate to the executive the absolute power to make treaties on a certain subject, but the use of the word "treaties" was probably an inadvertence. There may be a bargain between independent states, which is something less than a treaty, and postal conventions are in the nature of commercial transactions without any direct political significance.

By the Convention Postale Universelle concluded by our government with other powers, under authority of this statute in 1891, any controversy as to its meaning is to be decided by arbitrators, one of whom is to be chosen by "chacune des Administrations en cause." For us this "administration" must mean the postmaster-general. He raises the question, puts it in proper form, and selects the judge.

To state the point under consideration in its simplest form, the president has a double duty in regard to every treaty of the United States. He must superintend its execution as a contract; he must also take care that it is executed as a law. It may require that certain things be done by the United States. If so, it is he that must do them, so far as they are of an executive character. It may simply authorize such things to be done by the United States. If so, it authorizes him to do them, so far as they are of an executive character. A treaty, in a word, which leaves any matters to the future determination of the president, vests him with the power to determine them as effectually as an act of Congress could do.

The Hague convention, when ratified by the senate, became thus a standing warrant or, so to speak, a power of attorney, from the United States to the president to submit such international controversies as he might think fit to the ultimate decision of the international court of arbitration.

The view here taken of the functions of the president under this convention is opposed to that favored by Mr. Holls, one of those who helped to frame it, in an article contributed by him to the "Review of Reviews" in November, 1899. He there said that whenever arbitration is sought by the United States "the litigating parties are to sign what is called the compromise, but what is in reality the treaty of arbitration for the particular case, requiring on the part of the United States ratification by the senate in every instance." No reasons are given for the conclusion thus announced, and none are apparent except the extreme gravity of the act in question, and the possible impolicy of allowing one man thus to put at risk great national interests and pledge the public faith. Were our president a titular sovereign, these considerations



would seem of little weight. He is not that, but he has many of a sovereign's powers. It is not inconsistent with free government to give high functions to great officers. England is essentially a republic, but her king certainly has the powers under the Hague convention which Mr. Holls would deny to the president. It is noticeable that in his extensive treatise on the work of the conference, published since the convention was ratified by the senate, no reference is made to any such limitation on the president's powers.

The control of congress and primarily of the house of representatives over the treasury may, no doubt, be a serious impediment to executive action. A refusal of the necessary appropriations to satisfy our treaty obligations is always a possibility; but experience has proved that it is little more. Public sentiment, with rare exceptions, will be behind the president, upon such a question, for the newspapers which manufacture or mirror it seldom depart avowedly from ethical ideals, and still more seldom allow the people to forget their transgression by legislators.

A review of our political limitations, therefore, shows few that are radically inimical in practice to effective diplomacy. If, as a great power, we must at some points move more slowly than the rest, at others we need hesitate less than they. There is no ministry to be overthrown, if the president's policy fails to command the approval of congress. There is no fear of a more and more rigorous conscription to chill any public ardor for war. There is a strength of position to the president, when entrenched behind a treaty once ratified by the senate, which no mere majority in congress can overcome. He needs the help of but a bare third of either house, in such a case, to keep things as they are.

It has sometimes been said, though seldom by any but Americans, that we ought not to mingle in the affairs of other continents, because we could rarely be represented by men able to negotiate on equal terms with the European diplomats. It is true that we have no leisured class from which to select, composed of men who from childhood have been trained in the usages of good society and brought into close contact with those familiar with foreign offices and courts.



But we have another class, gifted on a different side with special qualifications for the diplomatic and consular service, and from which that service among us is, as to its higher places, in fact mainly recruited. It is the American bar. The nominations come from a president or a secretary of state who is commonly a lawyer. It is a committee mainly of lawyers to which, in the senate, they are referred; and the ambassador, or minister, or consul-general thus appointed is, in a majority of instances, a member of the bar, or at least one who has received a legal education. The knowledge and training which this implies are such as to bear directly on a man's ability to conduct a diplomatic controversy. He will be apt to see the real point involved; to detect fallacies in argument; to be patient of delay; to seize his opportunity, when it comes, and to press it to the utmost.

Nor is this all. Whether our representatives at the principal foreign courts are or are not lawyers, it is practically necessary that they be men of independent fortune, on account of the small salaries attached to these positions. A property qualification has, in effect, been thus imposed. It cuts us off, not infrequently, from securing the services of better men than those we send. President Noah Porter and Judge Dwight Foster of Boston may be mentioned, for instance, as among those by whom the mission to Great Britain has been declined, in part, at least because their private means were insufficient to allow them to fulfill its social duties as they would wish. But, on the other hand, it cuts us off from the office seeker, who goes into politics for the money he can get out of it; nor is it to be denied that the possession of wealth is generally evidence of mental capacity, joined with sound judgment, either in the man who has it, or in his immediate ancestors, some of whose traits he is also not unlikely to inherit.

The great families in European monarchies are practically accorded a certain pre-emptive right in respect to diplomatic preferment, if they show any sort of adaptation to such functions. We are free from any such incubus, and this goes far towards balancing our want of a class both leisured, cultured, and rich, from which to recruit our foreign service. We miss,

however, those ties of inherited friendship and lifelong association, which bind the aristocracy of one land to that of another. That is a legitimate and powerful means of smoothing the way to the confidence of foreign ministers and courts, which can seldom exist when there are no privileged orders in society.

But were the material for our diplomatic service worse than it is, our weight as a great power would be less affected than would be possible in the case of any other nation. It is the necessary result of our accumulated and accumulating wealth, and it is likely to come in question seldom except when we are pressing commercial and pecuniary claims. The world has become our debtor during the last four years to the amount of two thousand million dollars. The German empire has placed a loan in Wall street. Foreign militarism is wasting in barracks and camps the labor power which American youth is devoting to profitable production. We sell the bread on which European armies are fed. The business of our diplomatic representatives is henceforth to be largely of a consular description. They will be agencies to extend trade and collect bills. These are plain matters and can be handled by men who might be incompetent to plan alliances, arrange court marriages, or pave the way towards military conquest.

# AGREEMENTS OF THE UNITED STATES OTHER THAN TREATIES.

BY CHARLES CHENEY HYDE.

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Freedom from any violation of a requirement of the constitution is a condition essential to the validity of every international contract to which the United States may be a party. The constitution provides that the president "shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur." It is the purpose of the writer to show under what circumstances our government has deemed it not unconstitutional, and therefore lawful, to enter into international compacts which have not been submitted to the senate for approval, and to ascertain what has been the actual scope of the exercise of the agreement-making power of the president as distinct from the treaty-making power which is shared by the senate.

The tariff act of 1890 authorized the president to remit certain duties on articles brought from such foreign countries as gave certain privileges to American products. In sustaining the constitutionality of the law, Mr. Justice Harlan, in delivering the opinion of the United States Supreme court, said:

"What the president was required to do was simply in execution of the act of congress. . . . He was the mere agent of the lawmaking department to ascertain and declare the event upon which its expressed will was to take effect. It was a part of the law itself as it left the hands of congress, that the provisions, full and complete in themselves, per-

mitting the free introduction of sugars, molasses, coffee, tea, and hides, from particular countries, should be suspended in a given contingency, and that in case of such suspension, certain duties should be imposed."

By virtue of that act, reciprocity agreements were entered into by the president with certain states. By the tariff act of 1894 these agreements were terminated. Again, in 1897, the tariff act of July 24 authorized the president to enter into commercial agreements with countries producing and exporting specified articles, in order to secure concessions in favor of American products and manufactures, and empowering the president, during the period of such concessions, to suspend the duties named in the act according to a given schedule of rates. In pursuance of this authority the president entered into a reciprocity agreement with France, signed by the Hon. John A. Kasson and the French ambassador, May 28, 1898. In 1902 an amendatory and additional agreement was entered into extending the arrangement to Porto Rico and Algeria. It is to be observed that these reciprocity arrangements, although expressed in the form of contract, imposed no restriction on the United States or other parties thereto to alter their tariff schedules and thus terminate their obligations to exact reduced or limited duties on articles brought into their territory.

By an act of congress of 1872, the postmaster-general was authorized to conclude "by and with the advice of the president" postal "treaties and conventions" with other states. By virtue of this authority postal conventions have frequently been negotiated with various nations. In 1897 our government became a party to the universal postal union to which almost all civilized countries have adhered. It is a significant fact that agreements of this character to which the United States has become a party are not contained in the published collections of treaties of the United States. It has been pointed out by the Hon. Simeon E. Baldwin that the term "treaties," employed in the act of 1872, was an inapt expression of the declared purposes of congress in authorizing



the executive department to enter into such conventions. His comment as to their character deserves attention:

"There may be," he says, "a bargain between independent states which is something less than a treaty, and postal conventions are in the nature of commercial transactions without any direct political significance."

The reciprocity agreements and postal conventions negotiated by the president with other nations do not appear to be exceptions to or violations of the constitutional requirement as to the mode of making treaties; they rather serve as illustrations of the exercise of a different power incidental to the executive control of the intercourse of our government with friendly states.

In 1844 a treaty providing for the annexation of Texas was signed and on the 8th of the following June was rejected by the senate. On March 1, 1845, by joint resolution Texas was incorporated into the United States. The comment of the late Professor Von Holst on the propriety of this procedure is of interest:

"The provision," he says, "that treaties should be concluded by the president, with the co-operation of two-thirds of the senators, had no reasonable purpose if even the utmost which could be accomplished by the treaty-making power could be effected likewise in the most informal and most unguaranteed manner, in which any action whatever of congress could be taken."

Hawaii was annexed to the United States by joint resolution approved July 7, 1899, which purported to accept the existing offer duly made by the Republic of Hawaii to cede "absolutely and without reserve to the United States of America all rights of sovereignty of whatsoever kind," together with all rights of property in control.

The agreements of the United States thus far considered, whether of political or commercial aspect, have been entered into by the executive by the authorization of both houses of congress. Attention is called to certain instances where the president has been impliedly or expressly authorized by the senate, in its executive capacity, to contract with foreign states, and to cases where at the present time it is maintained

by publicists that such authority has been given. The secretary of state and the Mexican minister in Washington on June 4, 1896, signed an agreement for the reciprocal right to pursue savage Indians across the boundary line by troops of their respective governments. Article X. stated, "the senate of the United States having authorized the president to conclude this agreement, it shall take effect immediately." By the terms of article XXI. of the treaty of Guadalupe Hidalgo with Mexico, signed February 2, 1848, and ratified by the senate—a contract which is still in force—a permanent agreement was made for the settlement of future differences between the two nations, incapable of adjustment through diplomatic channels "by the arbitration of commissioners appointed on each side, or by that of a friendly nation." It was further agreed that in case "such course be proposed by either party, it shall be acceded to by the other, unless deemed by it altogether incompatible with the nature of the difference, or the circumstances of the case." The agreement did not attempt to provide machinery to facilitate the settlement of future disputes, but simply to bind the parties to arbitrate future disputes, subject to certain reservations. The treaty contains no statement as to any preliminary agreement to be entered into providing for the submission of a dispute which might arise. It did not indicate who, in behalf of the United States, should determine what particular controversy might be properly submitted to arbitration, or who should limit the scope of the reference, or who specify the procedure to be followed. Can it be reasonably maintained that the senate, by failing to reserve the right to share in the determination of these matters, surrendered them wholly to the control of the president? "A treaty," writes Judge Baldwin, "which leaves any matters to the future determination of the president, vests him with the power to determine them as effectually as an act of congress could do," May it be fairly said that the reference of the Pious fund claim in 1902 to the Hague tribunal by the terms of a protocol not submitted to the senate was a reasonable exercise of a right conferred upon the president by the treaty of 1848?

By the ratification of the Hague convention of 1899, establishing the permanent court of arbitration, the United States became a party to an agreement of lasting significance. That convention fulfils a twofold function. It is first, a declaration respecting the legal value of means adapted to the peaceful solution of international differences, together with a recommendation for their employment whenever occasion may arise; secondly, it embodies an agreement for the establishment of a permanent court of arbitration, and a system of procedure whereby the signatory states may avail themselves of any of the measures devised or suggested in the convention. It is not a compact to refer differences to arbitration or to employ commissions of inquiry. With the exception of the agreement in article II., to have recourse to the good offices or mediation of one or more friendly powers, in case of serious disagreement or conflict, the executive undertakings of the high contracting parties relate to the establishment of the court or to matters of procedure. For example, arrangements are made for the creation of an administrative council composed of the diplomatic representatives of the signatory powers at the Hague (article XXVIII.), as well as for the establishment of an international bureau at the Hague to conduct the administrative business of the court (article XXII.). Agreement is made for the appointment of judges by the several powers (article XXIII.) and for payment of the expenses of the international bureau (article XXIX.). Article XXXI. contains the statement that "the powers which resort to arbitration shall sign a special act (compromise) in which the subject of the difference shall be precisely defined as well as the extent of the powers of the arbitrators."

There has been much discussion in this country of the question whether ratification of the Hague convention by the senate authorized the president at his discretion to enter into agreements with other states to refer pending or unknown disputes of the United States to the permanent court, or to employ other means of procedure set forth in the convention. The Hon. John W. Foster, in the course of a learned article in the "Yale Law Journal" for December, 1901, said:



"But I apprehend that should our government decide to refer any dispute with a foreign government to the Hague tribunal, President Roosevelt, or whoever should succeed him, would enter into a convention with the foreign government, very carefully setting forth the question to be arbitrated, and submit that convention to the senate for its advice and consent. If I read the constitution of the United States and the Hague convention aright, such would be the only course permissible by those instruments."

The late Frederick W. Holls, secretary of the American delegation to the Hague conference, expressed the view that—

"The appointment of a commission of inquiry, having no further necessary consequences than the providing for each party's share of necessary expenses, would seem to be within the ordinary diplomatic functions of the president and the department of state by memorandum or protocol, whereas an agreement to submit any question to a court of arbitration, the decision to be binding upon the parties, must necessarily take the form of a treaty requiring the constitutional co-operation of the senate."

On the other hand, Judge Baldwin has said:

"The Hague convention, when ratified by the senate, became thus a standing warrant, or, so to speak, a power of attorney, from the United States to the president to submit such international controversies as he might think fit to the ultimate decision of the international court of arbitration."

When it is considered that the Hague convention contained no agreement to resort to arbitration, but rather purported to facilitate the means for the adjustment of international differences by providing and suggesting appropriate methods of procedure, it is difficult to see how ratification by the senate gave to the president a special power to enter into agreements to have recourse to the permanent court or to other tribunals. Undoubtedly the senate did authorize the president to co-operate with the other signatory powers in taking the necessary steps for the establishment and maintenance of the permanent court. But the adherence of the United States to the convention sheds no light on the general question whether or not the president may, at his discretion,



submit causes to arbitration. If he has such a right, it must be derived from a power, incidental to the management of the diplomatic intercourse of the nation, to adjust and settle disputes. It must be obvious that the existence and scope of that right are matters wholly distinct from and unrelated to the methods of procedure which he may employ in its exercise.

There have been many instances where the executive without the expressed or implied consent of congress or of the senate has entered into agreements for the settlement by arbitration of claims of American citizens against foreign governments. By the terms of an agreement concluded at Madrid in February, 1871, by an exchange of notes between General D. E. Sickles, the American minister, and Señor Don Christino Martos, the Spanish minister of state, there was established at Washington a court of arbitration known as the Spanish claims commission, to which were referred claims of citizens of the United States on account of wrongs and injuries committed by authorities of Spain in Cuba. The commission was organized at Washington, May 31, 1871, and adjourned sine die, December 27, 1882. Out of one hundred and thirty original cases which were filed, thirty-five were allowed. The whole amount claimed was \$30,313,581.32, exclusive of interest, of which \$1,293,450.55 was awarded. Appropriations made by congress from time to time in payment of the share of the United States in the expenses of the commission amounted in all to \$126,324.59.

By virtue of a protocol signed May 22, 1902, the claims relating to the Pious fund of the Californias against Mexico was referred to the Hague court for adjustment. Still more recently, by a protocol signed February 17, 1903, all unsettled claims of citizens of the United States against Venezuela were submitted to arbitration.

In no case which the executive by protocol or otherwise, without consent of the senate, has referred to arbitration, has a claim against the United States been the subject of adjustment. According to the terms of two agreements, claims of foreign governments against American citizens have been submitted to the consideration of arbitral tribunals. In both of these, however, the arbitration agreement has distinctly provided that an award in favor of such governments should

not be a ground for claim against the United States, and that satisfaction thereof should be derived solely from the estates of American citizens whose claims were the subject of adjustment before the same tribunals. In no case has the United States been interested pecuniarily in the indemnities claimed or awarded.

A type of agreement other than a treaty, frequently employed by sovereign states in their diplomatic intercourse and constantly made use of by our own executives, is the *modus vivendi*. It has been defined as—

“An agreement between two or more nations as to their conduct in regard to matters in dispute pending the adjustment thereof. That is to say, it is a temporary treaty or convention limited to a period which as a general rule is very brief.”

Pending the settlement of an international difference relating to the daily occupations of citizens of opposing states, it is oftentimes of vital importance that a tentative arrangement should be made to afford protection to persons directly interested in the subject matter of the controversy. It must be apparent that the president, charged with the duty of conducting the foreign relations of the state, ought to be able to negotiate temporary agreements of such a character. As a matter of fact, the president, through the department of state, has not been reluctant to make use of the *modus vivendi* when occasion has required. Such an agreement was entered into between the secretary of state and the British minister in 1885 with respect to the Northeastern fisheries, giving American fishermen permission to fish in British waters during the summer of 1885. Another relating to the fisheries was agreed upon in 1888, securing certain privileges for American citizens, pending the ratification of a treaty between the United States and Great Britain calculated to settle the long standing fishery dispute. The treaty was not ratified.

On June 15, 1891, the United States and Great Britain by a *modus vivendi* agreed to prohibit the killing of seals in certain parts of Behring sea, pending negotiations for the submission of the Behring sea dispute for arbitration. Prior to the settlement of the Alaskan boundary dispute, two agreements were made by *modus vivendi*, relating to the

boundary between American and British territory; the first, in 1878, relating to the location of the line at a point on the Stikine river; the second, in 1899, concerning the location of the line in the region about the head of Lynn canal.

"There are certain compacts between nations which are concluded," writes Wheaton, "not in virtue of any special authority, but in the exercise of a general implied power, confided to certain public agents, as incidental to their official stations. Such are the official acts of generals and admirals, suspending or limiting the exercise of hostilities within the sphere of their respective military or naval commands, by means of special licenses to trade, or cartels for the exchange of prisoners, of truces for the suspension of arms, or capitulations for the surrender of a fortress, city, or province. These conventions do not, in general, require the ratification of the supreme power of the state, unless such ratification be expressly reserved in the act itself."

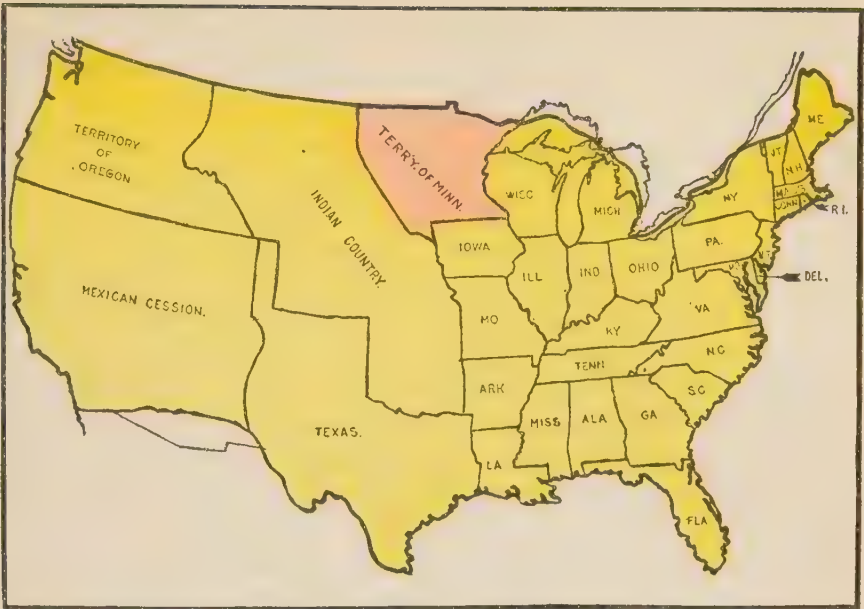
In its non-hostile relations with the enemy, the United States when at war must of necessity enter into agreements relating to a variety of matters incidental to the conducting of hostilities. These agreements of a national character and of varying importance may be entered into by the president. As commander-in-chief of the army or navy, he alone has the power to conclude such contracts. The agreement of the subordinate military commander may be in excess of the powers impliedly conferred on him by the commander-in-chief. In such case the compact is called a sponsion, and of course has no legal value. If the president assents to the terms of an arrangement entered into by an officer in the field, or if he himself personally directs the contractual negotiations, the agreement is in most cases a binding one upon the nation.

There may be, however, agreements in the form of capitulations, of a political character, and of such far-reaching consequences as to properly require the approval of the treaty-making power of the state in order to bind the country. Such compacts are in reality not of a military character, although the occasion for them may arise from a condition of war. The protocol, for example, entered into by the secretary of state in behalf of the president, and the French ambassador, representing the Spanish crown, August 12, 1898,

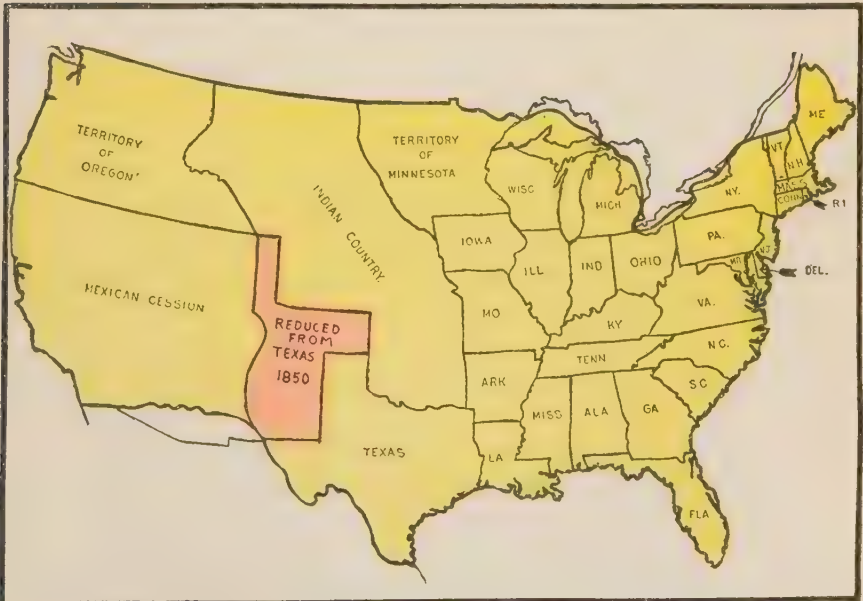








NO. 23.—1849. TERRITORY OF MINNESOTA FORMED FROM NORTHERN PORTION OF FORMER TERRITORY OF IOWA.



NO. 24.—1850. TEXAS CEDES 123,784 SQUARE MILES OF HER NORTHERN TERRITORY TO THE UNITED STATES FOR THE SUM OF \$10,000,000.



arranging for a termination of hostilities in the war between the United States and Spain, provided a basis for the terms of the treaty subsequently negotiated by commissioners of the two countries at Paris. Among its stipulations were provisions for the relinquishment of Cuba, the cession of Porto Rico, and the control of the Philippines. According to the fifth article it was agreed that the treaty, embodying the terms agreed upon in the protocol, should be "subject to ratification according to the respective constitutional forms of the two countries." Whatever be the limits of the power of the executive in time of war to bind the nation by agreements entered into with the enemy, his right to do so as commander-in-chief of the military and naval forces is clear, and its proper exercise concerns matters within a wide range the adjustment of which involves the use of a broad discretion.

Without attempting their classification, attention is called to certain other agreements entered into in behalf of the United States, which have not been submitted to the senate for ratification. By the terms of a protocol signed at London, December 9, 1850, Great Britain ceded to the United States the Horseshoe reef in Lake Erie in order to enable the grantee to build a lighthouse thereon, and "provided the government of the United States will engage to erect such lighthouse, and to maintain a light therein; and provided no fortification be erected on said reef." The last paragraph of the protocol contains the statement that "Mr. Lawrence and Viscount Palmerston, on the part of their respective governments, accordingly agreed that the British crown should make the cession, and that the United States should accept it, on the above mentioned conditions." Shortly thereafter, Mr. Webster, as secretary of state, instructed Mr. Lawrence, as the American minister at London, to inform the British government that the arrangement was "approved by this government."

A conditional agreement was entered into by Brigadier-General John C. Bates, subject to the approval of the governor of the Philippine Islands, and confirmation of the president, and the sultan of Jolo, August 20, 1899, by the terms of which the sovereignty of the United States over the archipelago of Jolo and its dependencies was acknowledged and declared.



There have been some agreements in the form of protocols, or concluded by an exchange of notes, explanatory of the meaning of treaties previously ratified by the senate. Upon the exchange of ratifications of a treaty negotiated in 1830 with the Ottoman Porte, David Porter, who had been appointed American chargé d'affaires, signed at Constantinople a paper in Turkish, by the terms of which it was agreed by himself and the Turkish government, that the United States accepted without reserve the Turkish text of the treaty, and—

“Therefore, on every occasion the above instrument shall be strictly observed, and if, thereafter, any discussion should arise between the contracting parties, the said instrument shall be consulted by me and my successors to remove doubts.”

This agreement was duly received by the department of state, and the act of Porter does not appear to have been disapproved.

An agreement by protocol was entered into by the Hon. Caleb Cushing when American minister at Madrid, and the Spanish minister of state, January 12, 1877, relating to judicial procedure with respect to the trial of American citizens residing in Spanish territory, charged with the violation of Spanish laws, and concerning the trial of Spanish subjects in the United States, charged with criminal offences. In its preamble, the protocol stated the desire of the two governments “to terminate amicably all controversy as to the effect of existing treaties in certain matters of judicial procedure,” and it purported therefore “to make declaration on both sides as to the understanding of the two governments in the premises, and respecting the true application of said treaties.”

After the ratification of the treaty of Guadalupe Hidalgo, signed in 1848, President Polk sent Messrs. Sevier and Clifford to Mexico to explain certain amendments which had been made by the senate. Before the arrival of those gentlemen at their destination the treaty had been ratified by Mexico. Before the exchange of ratifications, however, they concluded with the Mexican minister of foreign affairs a protocol purporting to be an explanation of the meaning of the treaty. In a message dated February 8, 1849, the president stated, “Had the protocol varied the treaty as amended by the senate, it would have no binding effect.”

An agreement of great importance other than a treaty was the "final protocol," signed by the Hon. W. W. Rockhill, special commissioner, representing the United States, together with representatives of Germany, Austria-Hungary, Belgium, Spain, France, Great Britain, Italy, Japan, The Netherlands, and Russia, on the one side, and representatives of China on the other, on September 9, 1901. The agreement contained the foundation for re-establishment of relations between China and the powers and set forth the method of their readjustment. Undertakings of far-reaching character were imposed upon China. The protocol declared the formal compliance with the previous demands of the powers which have been classified under four heads:

"(1) Adequate punishment for the authors of and those guilty of actual participation in the anti-foreign massacres and riots; (2) the adoption of measures necessary to prevent their recurrence; (3) the indemnification for losses sustained by states and foreigners through these riots; and (4) the improvement of our relations, both official and commercial, with the Chinese government and with China generally."

It is impossible to summarize the results of this examination of the practice of our government. It must be assumed that in each case where an agreement other than a treaty has been negotiated with a friendly state there has been a sincere belief on the part of the executive that the constitution has not been violated, and that a valid international compact has been negotiated. If the president in many instances, such as have been cited, may lawfully contract with foreign nations, without the advice and consent of the senate, no constitutional declaration is needed in order to attach a legal consequence to a compact so concluded, and render it binding upon the United States. As a result of its membership in the family of civilized states, this country of necessity recognizes as a part of its local law, the law of nations. According to that law, agreements of the United States, not in violation of the constitution or of the accepted public policy of the civilized world, whether treaties or agreements other than treaties, in whatever form expressed, are a part of the supreme law of the land.

# ATTITUDE OF THE AMERICAN GOVERNMENT TOWARD AN INTEROCEANIC CANAL.

BY IRA D. TRAVIS.

[Ira D. Travis is and has been a close student of conditions affecting the Isthmian canal question more especially from an economic standpoint; Dr. Travis, who is eminent both as a chemist and as an educator, was formerly professor of chemistry in the University of Utah but resigned to become principal of the high school of Salt Lake City.]

The nineteenth century had run more than a quarter of its course before the government of the United States gave expression to any opinion on its attitude toward an interoceanic canal, and even the formal request of the republic of Central America for the co-operation of the United States in the opening of a ship canal, which was made in 1825, found our government apparently destitute on any clearly defined notions regarding the best means for protecting and controlling a work of that character. Something more than a year passed before its views on that subject were made known.

The first statement of them came from the pen of Henry Clay and form part of his instructions to the American delegates to the Panama congress. After asserting that a ship canal across the isthmus would constitute a proper subject for consideration by that body, Mr. Clay states that such a work would be of more or less interest to all parts of the world, and especially to this continent. It should, therefore, be effected by common means and united exertions, and not left to the unassisted efforts of any one power, neither should its benefits be appropriated to any one nation, but extended to all parts of the globe upon the payment of just compensation and reasonable tolls. In harmony with these views, Mr. Clay gave explicit instructions that any proposals for the joint construction of the work should be received and transmitted



to the government with the assurance that they would receive attentive examination with a view to reconciling the conflicting views of all American nations.

Such, in brief, was the first authoritative statement concerning the attitude of the United States toward such enterprises. Although necessarily couched in general and indefinite terms, it clearly indicated a purpose to adopt a broad and liberal policy respecting the use and control of any trans-isthmian highway that might be opened. Nevertheless, its adoption was dependent upon the attitude of other powers.

Interest in the subject of an interoceanic canal steadily grew. Already English and American companies had been formed for the construction of such a work. Within the next few years a Dutch company, under the patronage of the king of Holland, entered the race for the coveted privilege of opening a canal between the two oceans, and by 1830 had secured the necessary concessions and apparently was about to begin the work of construction. This aroused the apprehensions of the United States and urged the government forward in the development of a definite policy respecting the proper status for the proposed work. The right of the United States to equal privileges with other nations in the use of the canal was asserted. In order permanently to secure this right it was demanded that American citizens and even the government itself should be permitted to subscribe to the stock of the company. The early failure of the Dutch enterprise made it unnecessary for the government to press the matter further. Nevertheless, this incident revealed the fixed purpose of the United States to prevent any foreign power from monopolizing the channel.

Failure of the Dutch enterprise, however, was not followed by a decline of American interest in interoceanic communication. On the contrary, both government and people gave it increased attention and the result was the development of more advanced ideas. Neither the friendly attitude of the government nor the most positive assurance that no other power would be permitted to monopolize the use or control of any sea to sea highway satisfied the people. They



now demand that the government should facilitate the construction of an interoceanic canal.

By 1835 this demand had become too strong to be ignored by congress. Early that year a resolution passed the senate calling upon the president to consider the expediency of treating with the governments of Central America for the effectual protection of such individuals and companies as might undertake to open a communication between the Atlantic and Pacific oceans. The resolution likewise required that the contemplated treaties should permanently secure to all nations the free and equal right of navigating the canal. The only immediate result of the senate's action, however, was the dispatch of an agent to Central America to obtain information concerning existing projects, including contracts with foreign powers, for the opening of a ship canal between the two oceans. Apparently the executive was not ready to commit the government to a more decided course. At all events nothing further was done at that time and the following year the president frankly announced that it was then inexpedient to open negotiations respecting the protection and enjoyment of a waterway between the two oceans.

However, congress did not share that view, and the subject of interoceanic communication continued to attract more or less attention in both branches. One result of this was an elaborate report, presented during the closing session of the twenty-fifth congress, explicitly asserting the necessity for international co-operation for the construction of a ship canal across the isthmus, and urging that negotiations looking to that end be opened with the leading powers. In this respect the report reflected the popular sentiment of the time. Such a course was zealously advocated in the leading financial and commercial centers of the country for several reasons. The leading powers of Europe must be enlisted in the undertaking in order to obtain the necessary capital. The co-operation of the states of Central America was likewise essential since they possessed the sole and undoubted right to dictate the terms upon which a canal could be opened through their territories. Moreover, the only way the United States could provide effective security for her interests was by co-operating

liberally and efficiently with other powers in promoting the construction of the desired transit. It was, therefore, highly desirable that no time be lost in opening negotiations for that purpose, lest dispositions might be made which would preclude the possibility of proper security for American interest. So importunate were the demands for such action that in 1839 the matter was taken up in the house. The result was the passage of a resolution similar to the one passed by the senate four years previous. Like its predecessor, it called upon the president to open negotiations with foreign powers for concerted action in constructing a ship canal between the two oceans that should be open to all nations upon terms of equality. This resolution, however, was as barren of practical results as the former one. Yet the subject of interoceanic communication lost none of its interest for the American people, and as time passed more and more attention was given to it.

This increased attention revealed the almost insuperable obstacles to the construction of a ship canal and led to the consideration of substitutes for a water transit. Naturally railroads were suggested as a proper substitute; a larger number of routes were adapted to them and they could be built at a much less cost. For a time the advocates of this mode of communication rapidly grew in numbers and urged their views upon the public with increasing vigor. Yet the idea of a ship canal was not abandoned; interest in it kept pace with that in land communication. In a word, that interest had already culminated in the demand for some means of communication between the two oceans. Moreover, the idea was gaining ground that such a work was absolutely essential to the commercial welfare and prosperity of the United States. This led many to believe that the matter should no longer be left to the unaided efforts of individuals or private corporations, but should receive the active countenance and support of the government.

But the people soon came to realize that the mere construction of a transit between the two oceans would not meet all the requirements of the case. It was equally important that the completed work should be placed upon a satisfactory

basis; otherwise it might prove to be a source of annoyance and injury to the United States. Accordingly the question of a suitable status for the isthmian transits came to occupy a large share of public attention. The government became solicitous for the conservation of American interests in inter-oceanic highways. Its diplomatic agents and consuls were instructed to use all diligence to prevent citizens and subjects of foreign powers from obtaining greater privileges in a canal or railroad between the two oceans than were accorded to American citizens. Yet it is not to be inferred from this that our government was intent upon securing any exclusive privileges in such a work for its own citizens. It still clung to the idea that a ship canal or other means of communication should be provided through the joint efforts of the leading powers of the world, and thrown open to the use of all nations upon the same terms.

For a time events seemed to favor the development of this policy. In 1843 the republic of New Granada authorized her representatives to treat with the United States and other leading powers for the opening of a ship canal across the isthmus of Panama, on condition that the powers undertaking the work should guarantee the neutrality of the isthums. Although the action of New Granada was devoid of immediate practical results, it is probable that it was an important factor in determining the attitude of the United States toward isthmian transits for a considerable period of time. At all events the actions of the government for the next few years were in accord with the indicated policy of New Granada and finally culminated in the conclusion of a treaty with that republic. Another potent factor in developing the American policy was the famous dispatch of Henry Wheaton, then a leading officer in the diplomatic service of the United States. This distinguished authority upon international law had, while in touch with the thought and politics of Europe, thoroughly investigated the subject of interoceanic communication. As a result of his investigations Mr. Wheaton came to the conclusion that the early construction of a canal between the two oceans was essential to the preservation of American interests against the colonizing schemes of England



and France. Nevertheless, he emphasized the importance of placing the proposed canal under the control of the leading maritime powers of the world and providing for its permanent neutralization through international agreement. He contended that such artificial channels should be free like straits and other natural bodies of water and ought to be held in trust for mankind. Furthermore, the spirit of concession and regard for the public opinion of the world were strong enough to secure the accomplishment of this worthy purpose through the joint action of the great commercial powers. Indeed, it was the true policy of the United States to unite with other powers in promoting the establishment of means for free and unrestricted communication among the nations of the world. For her to refuse such co-operation and seek an isolated and unsocial policy would prevent the attainment of her true destiny.

Although denied the unqualified endorsement of the government, these views and the generous offer of New Granada were the most influential factors in facilitating the conclusion of the treaty of 1846. By its terms the United States undertook to guarantee efficaciously the neutrality of the isthmus and also New Granada's rights of property and sovereignty in the same. This was a wide departure from the early practice of the United States respecting foreign alliances. Yet much of the old opposition to such arrangements still remained. Proof of this is found in the effort which the government made to show that the treaty in question did not, in fact, constitute an alliance. In communicating the treaty to the senate the president stated that the guarantee only extended to a single province and was not made for political but for commercial reasons. The United States also had a greater interest in the isthmus than any other power. Besides, the parties to the treaty were not actuated by any desire for exclusive privileges, but wished to secure the right of free and equal passage over the isthmus to all nations. Moreover, it was confidently expected that England, France, and other leading maritime powers would enter into similar agreements with New Granada. Finally, should the United States neglect this opportunity, it was probable that other



nations would obtain exclusive privileges in the transit and thus deprive her of its advantages. It was, therefore, incumbent upon the United States to ratify the treaty. Yet if the peculiar features of the case did not greatly impair or wholly destroy the objections to such alliances, then the stipulations should not be entered into no matter what their advantages might be.

Although the treaty of 1846 was ratified by the senate, many, including the next administration, looked upon it as establishing a dangerous precedent. Nor was this view repudiated for many years thereafter, notwithstanding the added interest in the subject of intercoceanic communication resulting from the Mexican war. That struggle, which came to a close almost simultaneously with the ratification of this treaty, gave to the United States a vast region bordering on the Pacific ocean. It was at once recognized by the people of the United States that an isthmian transit was essential to the development of that region. In fact, there were many who regarded such a communication as absolutely necessary for the maintenance of American dominion on the Pacific coast. Accordingly, steps were at once taken to secure suitable concessions for the opening of a canal or railroad between the two seas. Mexico was offered a large sum for the privilege of opening a sea to sea railroad by way of the isthmus of Tehauntepec. The offer being refused, attention was directed to the route by the San Juan river and Lake Nicaragua. Government agents and private companies vied with each other in their efforts to secure a concession for a transit by that route. But no sooner had a suitable grant been obtained from Nicaragua than an unexpected obstacle to the enterprise appeared. Part of the route for the proposed transit lay within the territory claimed by Great Britain for the Mosquito Indians, and that power at once gave notice that no infringement of the Mosquito rights would be permitted. Obviously Great Britain was determined that the United States should not acquire a monopoly of the Nicaragua route. To the popular mind, then intensely jealous of England's motives, it appeared that she was intent upon checking the development of the country if not upon destroying the

integrity of the union. Under those circumstances the government of the United States felt constrained to adopt a definite policy respecting the status and control of any isthmian transit that might be opened. Moreover, public sentiment demanded that whatever else might be true of it, the new policy must facilitate the early construction of a transit between the two seas. But that necessitated the removing of the obstruction to the enterprise which the British protectorate of the Mosquito interposed. It was equally imperative that the work should be placed upon a basis satisfactory to the leading powers of the world; otherwise it would be impossible to secure the necessary capital for the undertaking. Finally, whatever else was done, American interests, present and prospective, must be conserved.

In the light of these facts and with a view to meeting the requirements of the case, the American policy respecting the status and control of isthmian transits was adopted. A cardinal principle of that policy was that no American monopoly of the transits should be sought or maintained. In short, the government reaffirmed its adherence to the principles to which the United States had been more or less definitely committed since the issuance of Clay's instructions in 1826. Although liberally inclined toward other nations, that government was determined to secure for the United States equal rights with them in the use and control of the proposed transits. Moreover, it was a fundamental maxim of the American policy that no guarantee of sovereignty to any state should be made as the price of a right-of-way for a transit. Neither would governmental countenance be given to any project for such a work based upon an assignable concession.

Such was the attitude of the United States respecting the isthmian transits when, in 1849, circumstances for the first time constrained the government to take an active part in promoting the construction of a means of communication between the two oceans. Negotiations were at once opened with some of the Central American states and Great Britain. From the former concessions were readily obtained, but they were of little value so long as the British pretensions regarding

Mosquito rights were maintained. That such would be the case was early perceived by the government and it was for the removal of that obstacle that negotiations were opened with the British government. The result was the conclusion of the Clayton-Bulwer treaty in 1850. By the terms of that instrument, which professed to set forth and fix the views of the two governments respecting a ship canal by the Nicaragua route, both Great Britain and the United States were forever bound to abstain from seeking or maintaining any exclusive control over the proposed channel, or exercising dominion in its vicinity or any part of Central America. They also agreed to use their influence in promoting the construction of the proposed channel and to protect the same when completed from unjust seizure or confiscation. The contracting parties also guaranteed the neutrality of the passage and undertook to invite all other powers with which they were on friendly terms to join in the stipulations for the protection and neutrality of the transit. It is also significant that the two countries were bound to extend their protection by treaty stipulations to any other practicable communications, whether by canal or railroad, across the isthmus which connects North and South America.

Very soon after the conclusion of this instrument the two governments became involved in a bitter controversy regarding the true import of some of its provisions. Although this dispute continued almost without interruption for a decade and frequently threatened the peace of the two countries, the government showed no disposition to repudiate the principles upon which the treaty was based so far as they related to the control of the canal. On the contrary, unqualified adherence to them was frequently reaffirmed. Said General Cass, "The United States do not seek either the control or exclusive use of these routes. They desire that the advantages should be common to all nations. What the United States want in Central America . . . is the security and neutrality of the interoceanic routes which lead through it. This is the desire of the whole commercial world. If the principles and policy of the Clayton-Bulwer treaty are carried into effect this object is accomplished." But the unshaken faith of the United



States in the soundness of its policy is even more conclusively proven by the treaties relating to interoceanic communication which the government negotiated during this period. These instruments not only did not conflict with the provisions of the Clayton-Bulwer treaty, but embodied substantially the same principles.

Yet it is not to be inferred from this that the bitter controversy with Great Britain was wholly devoid of influence upon the United States. All hope of an early opening of the canal being destroyed, interest in a railroad communication naturally revived. Owing to its proximity a road by the Tehuantepec route had long been desired. As already indicated, an unsuccessful attempt to secure a right-of-way for such a work was made in 1848. For a number of years thereafter the government persisted in its efforts to obtain a suitable concession for a transit through that region. Negotiations looking to that end were in progress when the Clayton-Bulwer treaty was concluded in 1850. Substantially the same principles obtained in the proposals which the United States made to Mexico as were embodied in the treaty with Great Britain. This attitude was maintained by the United States until some time after the dispute arose with Great Britain respecting the treaty of 1850. But the action of that power intensified American suspicions of European motives and induced the government to take a more radical stand in opposition to foreign control of isthmian transits. Mexico was explicitly informed that the United States would never consent that a transit by the Tehuantepec route should be placed under foreign supervision or control.

Thus matters stood till in 1853, when the conclusion of the Gadsden treaty placed citizens of the United States upon an equality with those of Mexico or any other nation in the use of a transit through Mexican territory. It was also stipulated that no interest in the transit should be transferred to any foreign power. This treaty, however, did not finally set the matter at rest. For some years after its conclusion foreign powers tried to obtain exclusive privileges in a transit by the Tehuantepec route. This called forth a declaration from Secretary of State Cass to the effect that the United



States would never consent that any distinction should be made in favor of foreign citizens over those of the United States in the use of a transit by that route. This was in 1857 and was soon followed by a proposal that a new treaty should be made giving to the United States a perpetual right-of-way across the isthmus of Tehuantepec, binding the two republics to maintain the neutrality of the transit and authorizing one or both of them to use force for its protection. It also made provision that other nations should be invited to join in the guarantee of neutrality for the transit. In connection with this proposition General Cass declared that the United States did not want the transit for herself, but for all nations. Indeed, the time had passed when restrictions of any kind upon such a thoroughfare for the benefit of any one nation to the prejudice of the rest could be patiently tolerated. He also stated that the practice of modern commercial nations, based upon the soundest policy, repudiated the idea that any restrictions should be made in favor of any particular power on the great avenues of international commerce.

Sometime previous to the proposal of the above mentioned treaty the United States government had been led to make a proposition for the more effectual protection of the Panama railroad. This contemplated the establishment of a neutral zone twenty miles in width along the line of that road. The actual control of this tract was to be given to the municipalities of Aspinwall and Panama at its extremities while Colombia was to retain nominal sovereignty. All nations were to be permitted the use of the road and were also to be invited to join in the guarantee of neutrality for the road and adjoining region. The project, however, was never carried into execution and, under the auspices of the next administration, the government in 1857 emphatically declined to become a party to the joint guarantee of the isthmus. The alleged reasons for this refusal were that the United States had already guaranteed the neutrality of the isthmus and that it was contrary to her policy to enter into alliances with foreign powers. Nevertheless, all opposition to other nations undertaking to guarantee the neutrality of the isthmus was unhesitatingly disclaimed.

Obviously the United States attached much importance to an interoceanic transit that should be a highway for the world's commerce. Yet it is equally clear that such a thoroughfare was not to be purchased at the price of an entangling alliance with an European power or a guarantee of sovereignty for a Spanish-American state. Nevertheless, the government had long insisted that the independence of the Cis-Atlantic republics should be respected and full recognition accorded to their rights of sovereignty over all transit routes through their territories. On more than one occasion the right of Nicaragua and other states of Central America absolutely to refuse permission for the opening of a transit through their territories had been emphatically asserted by the United States. Although the government rigidly held to these views for a number of years the course of events gradually wrought a change of attitude. By 1858 it was openly proclaimed that the possession of sovereignty over the territory traversed by a canal route did not convey the right arbitrarily to prevent the opening of a communication or even to limit its usefulness by the imposition of unreasonable or discriminating restrictions.

"Sovereignty," said General Cass, "has its duties as well as its rights, and none of these local governments . . . would be permitted to close the gates of intercourse on the great highways of the world, and justify the act by the pretension that these avenues of trade and travel belong to them and that they choose to shut them, or what is almost equivalent, encumber them with such unjust regulations as would prevent their general use."

But a change of attitude in this particular was not followed by a radical change of American policy as a whole. The government still disclaimed all desire for a monopoly of the isthmian transits and insisted that the advantages of such works should be equally common to all nations. Yet it was determined that no other power should obtain any exclusive privileges in the use or control of a communication between the two seas. So jealously was the freedom of the transits guarded that a proposition to station a small French naval force in Lake Nicaragua during the construction of a

canal met with the emphatic disapproval of the government.

Such in general was the policy of the United States in 1858, and such, with but slight modifications, it remained till some years after the close of the civil war. Naturally inter-oceanic communication attracted little attention during the continuance of that struggle. Nevertheless the events of that period were making for a radical change of policy on the part of the United States. Indeed, it is highly probable the complications growing out of the war and the incidental revelation of European antipathy for the United States were the most potent factors in creating an urgent popular demand for an exclusively American control of any transit that might be opened between the two oceans. At all events the smoke of battle had hardly cleared away before prominent Americans began to urge that steps be taken to promote the opening of an interoceanic ship canal under American auspices and control. As early as 1865, General Grant began to advocate the careful survey of the isthmus with a view to encouraging the opening of an American waterway, and the following year he wrote that he regarded it of vast political importance to this country that no European power should hold such a work.

Influenced by these and similar considerations, congress in 1866 authorized a thorough survey of the isthmus with a view to ascertaining the most feasible route for an ocean to ocean canal. This work once inaugurated was persisted in for fifteen years and resulted in the careful exploration of almost every conceivable route.

The following year a treaty was concluded with Nicaragua which placed the United States on an equality with that republic in the use of any transit across that part of the isthmus. The United States guaranteed the neutrality of such transits and obtained the right to employ her land and naval forces for the protection of the passage.

Meanwhile popular sentiment had undergone a radical change and now demanded that the United States should break with the policy of the past. The government was quick to respond to this change of sentiment. By 1868 negotiations were opened with Colombia for the express pur-



pose of promoting the construction of a ship canal that should be under the control of the United States. Secretary of State Seward now boldly asserted that the government could not permit a work constructed by it or its citizens to be used for the advantage of an enemy or to its own prejudice.

The result of these negotiations was a treaty signed in 1869. That instrument provided for the opening of a waterway across the isthmus of Panama that should be under the control of the United States, and expressly stipulated that the troops and ships of war belonging to other nations at war should be rigorously excluded from the channel. The contracting parties agreed to invite other nations to give adherence to the guarantee of Colombian sovereignty over the isthmus and of neutrality for the transit. Although the treaty was never ratified it is of interest in this connection since it marks the first radical departure of the government from its time-honored policy respecting the status of the interoceanic transits.

But the attempt to secure a monopoly of control for the United States was not to be lightly abandoned. In the negotiations for another treaty with Colombia which were almost immediately begun, the United States took a more radical stand in favor of an exclusively American control of the proposed canal. Although the demand for such a monopoly was a serious and perhaps insuperable obstacle to the acquisition of the necessary grant for the work, the government persistently refused to treat on other terms. Indeed, under the circumstances there was nothing else for the government to do. So strong was the popular demand for an American monopoly of the transit that any arrangement admitting foreign nations to a share in the control of the work would have aroused the apprehensions of the country and led to certain defeat in the senate. In a word, the United States had come to the conclusion that an isthmian canal was an American enterprise to be accomplished and controlled by Americans.

These negotiations finally resulted in the conclusion of another treaty with Colombia signed in 1870. By the terms of that convention the United States was bound to construct a canal across the isthmus and guarantee its protection against



the hostile attacks of other nations. In return the United States was to have full possession and control of the channel and also the right to erect and maintain the fortifications necessary to protect her interests. Nevertheless it was specifically stipulated that the proposed canal should be open to all nations except those that were at war with one or both of the contracting parties. Both governments agreed to secure the adherence of other nations to the guarantee of neutrality.

Although highly acceptable to the United States, the Colombian government refused to ratify this treaty. Thus the second attempt on the part of our government to secure a suitable grant for a transit under American control ended in failure. But these disappointments neither destroyed popular interest in the matter or induced the government to seek the co-operation of foreign nations in building or controlling such works. About two years after the signing of this treaty it was openly asserted by Hamilton Fish in a communication to congress that it had not been the policy of our government to encourage discussion or negotiation with European powers regarding the control of an isthmian canal. On the contrary it had sought to foster the opening of such a channel as an enterprise for Americans to undertake and carry to a successful completion. For a number of years thereafter this policy was maintained.

But by 1877 the United States was constrained to abandon, at least temporarily, the idea of an exclusively American control of the isthmian transits. For a number of years the government had relied upon its own individual guarantee of protection and neutrality for the canal to attract the necessary capital for the construction of that work. But experience had shown this expectation to be ill-founded and the government now determined to adopt a different course. That year a treaty was proposed to Nicaragua which not only repudiated the idea of an American monopoly of interoceanic waterways, but made definite provision for joint control by the leading maritime powers of the world. Provision was likewise made for an international guarantee of neutrality in order that the canal might be free to the navigation of all

nations. To such as would enter into the engagements of the treaty the canal was to be open at all times. It is significant, however, that the United States declared that she would not be bound by the stipulations of that instrument till three or more of the leading maritime powers of Europe had given it their adherence. But the treaty came to nought and within a very few years circumstances constrained the United States to resume her former policy respecting the control of interoceanic transits.

Doubtless the most potent factor in producing this reaction was the attempt of a French company to open a canal across the Panama isthmus. By many it was feared that the work would sooner or later fall into the control of the French government and thus become a menace to American interests. But the United States government could not be a silent witness to the consummation of an enterprise that jeopardized the interests of the nation or its subjects. It, therefore, openly proclaimed its unqualified opposition to a foreign monopoly of the transit and declared for an exclusively American control of the work. The formal announcement of this change of attitude was made by President Hayes in March, 1880. In a message to congress he declared the policy of this country to be a canal under American control. Moreover, the United States could never consent to surrender that control to any European power or combination of such powers. If existing treaties stood in the way of its realization, steps should be taken to establish that policy by just and liberal negotiations. Congress received these views with favor and at once proceeded to act upon the president's suggestions. The house soon passed a joint resolution calling for the abrogation of the Clayton-Bulwer treaty, which was justly regarded as a serious obstacle to the realization of the American policy.

These sentiments were so fully endorsed by the people that congress at its next session took a much more radical position respecting the matter. In the house the committee on foreign affairs reported that the construction of a canal across the isthmus by an European power or government would be in violation of the Monroe doctrine and could not be

sanctioned by the United States. Moreover, if a ship canal were opened at Panama or elsewhere the United States would insist that it should not be under the control of any European power. Hard upon this came a resolution from the senate committee on foreign relations asserting that the consent of the United States was a necessary condition precedent to the opening of a canal or the participation of other nations in its use.

Meanwhile the government had once more opened negotiation with Colombia. The result was the conclusion of a treaty which secured to the United States practical control of any canal that might be opened across the isthmus of Panama. The Colombian government, however, not only rejected it but showed some disposition to invite the powers of Europe in guaranteeing her sovereignty of the isthmus and the neutrality of any canal that might be opened through it. The apprehensions of this country were aroused and notice was at once given that such an arrangement would be regarded as an intrusion into a field where the interests of the United States were superior to those of all other nations. This followed from the fact that a channel connecting the two seas would for all practical purposes constitute a part of her internal communication. Consequently an agreement among European powers for its control would partake of the nature of an alliance against her, and constitute an extension of their political system to our shores and a menace to the peace and welfare of this country. Such, in brief, was the position of the United States respecting the neutralization and control of the inter-oceanic routes through a joint agreement of European powers as set forth by Mr. Blaine in his circular letter of June 24, 1881.

Having announced this policy to the world the next step was to promote its realization. Naturally attention was first directed to securing the modification or abrogation of any treaty engagements that stood in the way. Accordingly a modification of the Clayton-Bulwer treaty was proposed to the British government. This led to a long and spirited controversy regarding the original scope and purpose of that instrument; its binding force was also called in question by



the United States government, while that of Great Britain stoutly maintained it. The only important result of the controversy was to reveal the utter incompatibility of the British and American views respecting the proper status for isthmian transits.

Meanwhile public sentiment in this country had been setting more strongly in favor of an exclusively American control of the interoceanic highways. In harmony with the popular desire the government had undertaken negotiations with Nicaragua with a view to securing a suitable concession for the opening of a channel that should be under the absolute control of the United States. The most notable result of its efforts in that direction was the conclusion of the Frelinghuysen-Zavala treaty in 1884. By the terms of that instrument the United States acquired the right to construct and own a ship canal between the two oceans. She was also to become the joint owner with Nicaragua of a tract of territory two and one-half miles wide along the entire course of the canal. Besides a perpetual alliance was established between the two republics and the United States was placed under solemn obligation to maintain the integrity of Nicaraguan territory. But its provisions were so completely antagonistic to the fundamental maxims of American polity that the treaty found little favor with the administration which came into power while it was pending in the senate. President Cleveland at once withdrew it from that body and thereby originated a governmental reaction. During that period the government acted upon the theory that a ship canal across the isthmus should be a trust for mankind, free from the domination of any single power and shielded from the warlike ambitions of all nations. Furthermore, this desideratum could only be realized by interesting all the leading powers in maintaining the neutrality of the route.

The government's action, however, had very little influence with the people; they still clung to the idea that the United States should have control of the isthmian transits. This feeling was manifested in a variety of ways and ere long became influential again with the government. By 1891 Congress was ready to give force to the prevailing sentiment.



In order to prevent foreigners from acquiring a controlling interest in the maritime canal a bill was passed guaranteeing the payment of the Canal company's bonds. The bill also made it possible for the United States under contingencies to acquire virtual ownership of the canal.

For some years after its passage the government adhered to the policy of this bill. Various attempts were made to promote the construction of an isthmian waterway by lending the public credit to private corporations or by making the nation a part owner in the enterprise. But as time passed the drift of public sentiment in favor of an American monopoly of the transit became more pronounced and this induced the government to adopt a different course. Instead of lending assistance to private corporations it was proposed that the government should construct the canal and make ownership the basis for a monopoly of control. During the last few years numerous bills looking to the realization of such a scheme have received more or less attention from Congress. These bills provided for the acquisition of a right-of-way for a ship canal across the isthmus by the Nicaragua route and the construction of such a work at public expense. Some of them have also authorized the president to secure the abrogation of the Clayton-Bulwer treaty or its modification to such an extent that the United States might construct, own and operate the canal under its own exclusive control. The last and most notable attempt of this kind was the Morgan-Hepburn bill which passed the house of representatives. This bill authorized the president to acquire from Costa Rica and Nicaragua control of such portions of their territory as may be necessary for the construction and defence of a ship canal across the isthmus by that route. The bill also authorized the president to guarantee to those states the use of the canal and the ports at its extremities, and appropriated \$140,000,000 for the construction of the work.

In the meantime negotiations looking toward the modification of the Clayton-Bulwer treaty had been in progress at Washington. These resulted in the conclusion of the Hay-Pauncefote treaty signed February, 1900. Under the terms of that instrument the United States was authorized to con-

struct the canal and provide for its regulation and management. Yet the United States was prohibited from erecting any fortifications on the canal or the waters commanding it. It is also expressly stipulated that the passage shall be neutral and free to all nations in time of war as well as in peace. All nations were to be invited by the contracting parties to give adherence to the treaty.

After three-quarters of a century of discussion and negotiation the way has been cleared for the United States to construct and manage a ship canal between the two oceans.

## AMERICAN INTERESTS IN THE ORIENT.

BY CHARLES A. CONANT.

[Charles Arthur Conant, banker and author; born July 2, 1861, at Winchester, Mass.; became correspondent at Washington for New York Journal of Commerce, 1889; visited Philippines as special commissioner of the war department, 1901; author of History of Modern Banks of Issue, The United States in the Orient, Alexander Hamilton, and contributions on economic questions to magazines.]

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The United States have entered the circle of world powers struggling for opportunities in the Orient, and there is little reason to believe that they will withdraw from the struggle. They may show weakness in diplomacy or lose political advantages at certain points, but the importance of the economic interests involved,—affecting generations yet unborn as well as those now living,—are likely to make our interest in the development of China, Siberia, and the Philippines among the vital problems of our future commercial and political history. Political problems will arise regarding the administration of the new possessions of the United States, which will afford grounds for party conflict. In so far as these conflicts have to deal with questions of administration simply,—whether one form of civil government or another shall prevail in the islands acquired from Spain,—there is room for legitimate differences of opinion, which it is not the purpose of this paper to discuss. The economist is interested in civil government chiefly so far as it attains the highest efficiency from all points of view, which includes unfettered intellectual development for the individual and the guarantees of security and order for the free play of economic forces. For the purposes of economic discussion, it may be assumed that American influence will never cease to be paramount in the Philippines while we continue to be a powerful nation, and that American diplomacy will not cease to be seriously concerned with the opportunities for American enterprise in China.

It is a new experience for the United States to be seeking markets and opportunities for investment abroad, and many

still question whether there is any occasion for so doing. It is said that there are still abundant opportunities for the employment of surplus capital in our own country and that they will afford better returns than precarious ventures on foreign soil. There is sufficient force in these arguments to justify their serious consideration. The conclusive answer to the first proposition, however,—that adequate openings for investment are to be found in the United States or in the settled countries of Europe,—is found in the decline in the earnings of capital. This decline is reflected in the rate of interest on permanent investments. The rate for commercial discounts and call loans moves up and down under the impulse of the special demand for money created by panic or unusual conditions, but no economist is hardy enough to deny that the permanent return upon capital has fallen within the present generation in all advanced civilized countries. This fall was first felt in Europe, but has come in the United States, with a certain degree of suddenness, within the past decade. Where a rate of six per cent was formerly counted upon with confidence as the return from perfectly safe investments, the rate has fallen to about three and a half per cent. The reason is obviously found in the increase in the supply of loanable capital. This increase has not only been absolute, keeping equal pace with increased demand; but has been relative, greatly exceeding the ratio of increase in effective demand. The high prices of the best securities, the increase in savings bank deposits, and the forced conversions at lower rates of interest to which the holders of gilt-edged securities have been compelled to submit within the past dozen years, afford the conclusive evidence of this remarkable change in economic conditions.

The natural and obvious outlet for this excess of saved capital is in the equipment of the undeveloped countries with the machinery of production and communication which are a part of the mechanism of modern civilized life. The fact that higher returns are paid upon capital in these countries than in the old countries, tends to prove that capital finds there a use more beneficial to humanity and more productive to its owners. To the student of political economy, the flow of



capital to the point where it earns the most is the evidence of its high marginal utility at that point. The entire mechanism of the stock exchange and other organized markets has grown from the effort of capital to find the most productive fields and to ascertain with the greatest promptness and accuracy where they are to be found.

The investor, therefore, will naturally turn to the new countries for the placement of his capital and to obtain adequate returns. The practical question for the individual investor of the present moment is not whether, under some conditions of the future which are not conceivable to-day, opportunity may be found for the employment of his capital at satisfactory profits in the United States, but what are the present openings for such employment. He may believe that the irrigation of the western plains will absorb millions of capital more productively than the building of railways in Siberia, the opening of coal fields in China, or the development of sugar and tobacco plantations in the Philippines; but for the individual, acting under present conditions, there is no choice but to accept some of the securities which are thrown upon the market, whether he considers them profitable or unprofitable, honestly or dishonestly managed, safe or unsafe.

The time will undoubtedly come when such great enterprises as the irrigation of the western plains will be taken in hand, but the work is likely to be done by the government rather than by private enterprise. The capital will have to be obtained in either case from the savings of the country, but the prospect is that, at the present rate of saving in the United States, the capital for such enterprises can readily be obtained in addition to all that is invested abroad, and that the amount taken by taxation for such purposes will not appreciably affect the amount of private capital seeking investment on the stock exchanges. For the present, enterprises in the Orient and in Africa seem to offer the greatest attraction to the kings of finance; while for the future the prudent statesman is bound to consider whether the United States shall be deliberately barred from her share in such opportunities and in those which will grow out of them.

There are two phases of the contest for opportunities in the undeveloped countries,—the seeking of markets for finished goods and the seeking of opportunities for the employment of capital. It is often said by those who oppose a resolute foreign policy on the part of the United States that the market for finished goods which may be opened in China or other Oriental countries is not large in itself and will soon be pre-empted by domestic production. Already Japan is operating cotton mills which threaten to destroy the import trade in cottons from the United States. The same thing may happen in China and Siberia. The nation seeking these markets by large expenditures for military or commercial purposes may, therefore, finally close its hand over a prize which has turned to ashes,—the new countries producing their own finished goods and even coming into serious competition with the old producers.

While there is some force in this argument, and this competing production must be kept constantly in view, much of the danger will undoubtedly be obviated by the redistribution of industries. If it proves practicable for Chinese labor to be drilled into the management of the delicate mechanism of modern woolen and cotton mills, until the products of Chinese mills can be laid down in San Francisco or Chicago twenty-five per cent, or even five per cent, lower than they can be produced at home, the mills of the United States and those who work in them will undoubtedly suffer. But the process must be a gradual one and will be more fatal to capital than to labor, because capital sunk in a valuable plant is practically lost forever; while the laborer, under more or less stress, may finally find new employment.

The uplifting consideration in this matter, as in the entire history of the substitution of machinery for hand labor, or more efficient machinery for less efficient, is the increased producing power which it brings to the community. If the making of cheap cottons is relegated to the coolies of China or the peasants of Siberia, the American laborer or capitalist can obtain more cottons than formerly in exchange for a given amount of his own labor. If he makes shoes and formerly gave one pair of shoes for twenty yards of cotton, he may under

the new conditions obtain twenty-five yards of cotton for his pair of shoes. This proposition is so elementary that it does not need to be stated to the trained economist, but seems to escape attention in some of the current discussions of our new opportunities in foreign markets.

The vital question which must be faced, however, from the standpoint of the laborer displaced from the cotton mill, is whether he can find other employment equally good or better. The answer is, that he should find a better employment. If the shoemaker needs only twenty yards of cotton and can obtain twenty-five for a pair of shoes, he will spend the equivalent of the extra five yards on some other class of goods. These goods will be something which he has not had before. If he has gone without a carpet, he may now purchase one and give new employment to the carpet mills. If he has had a carpet but has gone without gas lighting, he may give employment to the plumbers and the many industries which intervene between the raw metal and the decorated gas fixture, and he will increase his demand upon the gas company. If he has already all these comforts of life, he will be able to spend his surplus for the finer things which minister to taste and culture. He and the thousands who find themselves in a similar position will offer higher rewards and wider employment to the decorative artist, the painter, the sculptor, and the writer. They will be able more easily than before to submit to higher taxes, that streets may be improved, sewerage perfected with benefit to health and length of life, or the splendid monuments of taste and national triumphs erected which have made Athens and Rome the Mecca of cultivated travelers and turned even their ornamental works indirectly into a source of income.

Put in a nutshell, the transfer of the lower grades of employment to other peoples, because they are willing to render the service in exchange for a smaller quantity of our products, means that more of our people are released for the finer, more stimulating, and more lucrative work of the skilled arts and the professions, and that there is more opportunity for employment in these professions. The product of a given amount of their labor exchanges for more and better things



than before; and this creates a larger demand for luxuries and the need for more workers to produce them. If the individual laborer does not believe himself capable of ascending to these new and higher grades of employment, he should remember that the process of the transfer of labor is a gradual one and that some comrade of special aptitude for the higher grades of employment may vacate a place which he can fill. Even if the derangement of industries seems to involve temporary hardship, the increase in the producing power of the community, as demonstrated by the history of the economic progress of our time, means that the children of the laborer of to-day and his children's children may be sharers in that greater leisure and higher intellectual and moral life which are the product of economic efficiency.

The real problem of openings in the Orient, however, concerns more the employment of surplus savings of capital than the finding of markets for finished goods. To the manufacturer or the laborer who may fear the competition of Chinese, Japanese, or Russian cotton mills, there is at least this to be said,—that this competition cannot be more harmful than the needless multiplication of such mills within the United States, because capital can find no other investment. The demand for labor might seem for a moment to be increased by the needless multiplication of mills; but the crisis of over-production would soon close a large proportion of both old mills and new, would bankrupt many mill owners, leave labor idle for long periods, and force it to compete against itself for such meagre wages as the surviving mills could pay. From the standpoint of the present laborer in an old mill the new competition would be peculiarly harmful, because it would be the old mills in most cases which would be driven to the wall. The new ones, by means of their modern construction and more efficient machinery, would be able to sell at a small profit at prices under which the old mills could operate only at a loss. The only safe outlet, therefore, for surplus capital seeking profitable returns is in countries which lack the modern mechanism of production and exchange, and promise rapid strides in economic efficiency if they are dowered with the savings of countries which are already thus equipped.



The question is sometimes asked, how will China or the Philippines pay for American goods sent to them? The question is based upon the fact that their present purchasing power is small and that they will not be able to make adequate return for large deliveries of American products in their markets. The figures may be cited to show that the trade of the Orient with the United States is a trifling fraction of the trade of the older countries with the United States. But this is far from closing the argument. What China will pay in is answered by the organization of modern finance. Other countries have been poor when they began to borrow foreign capital. The same question now asked in regard to China could almost equally well have been asked regarding the United States early in the century or regarding Australia within a generation. If they had been compelled to pay in full for all that was sent them, their purchases from the civilized countries would have been small and their development slow. If the farmers of the Dakotas had not been able to employ English capital,—or indirectly to get the benefit of English capital, by its employment in American enterprises which released American capital for their use,—the Dakotas would have followed the early settlements on the Atlantic seaboard in the tardy development of their natural resources. But the mechanism of modern finance not only permits the direct loan of large sums to foreign countries for their development, but even encourages the constant reinvestment of the interest earned upon these loans. Such loans are not advanced in the main in coin or bullion, but in agricultural machinery, rails and railway equipment, bridges, and the means of support for laborers.

The individual investor in loans abroad may desire to have his interest paid to him as an income in money in his own country; but other investors, with new capital to loan, provide the funds for these payments by the new countries and thus they accomplish in effect the continued use not only of the first capital lent, but of the interest upon it. Thus, while there is reasonable assurance of the solidity of the new enterprises, and while each enterprise may pay dividends upon its own operation, the sum of these dividends is con-

stantly applied to new enterprises in the borrowing country. It is not surprising that by this process the development of the western part of the United States, Canada, Australia, and Siberia, has proceeded with bewildering rapidity; and that almost in the twinkling of an eye they have been far on the road towards economic independence and the ability to repay the capital advanced to them from the old countries.

To put the matter in a more concrete form, let it be supposed that \$1,000,000,000 in American capital was invested in China. If interest on this amount was regularly paid at four per cent, the sum of \$40,000,000 a year would have to be exported in Chinese goods to the United States, or in Chinese goods to some country which exported \$40,000,000 of its products to the United States. The net balance would need to be the same, even though the movement either way was much larger. But this statement of the problem would assume that the investment was made once for all and was never increased. In fact, new investors would be constantly coming forward, offering the loan of their surplus savings for enterprises in China. Let it be supposed for convenience that these new offers in a given year were just \$40,000,000. The first investors might prefer to spend their dividends in the United States to reinvesting them in China. It would be simply a matter of international exchange to transfer the money of the new investors in the United States as dividends to the old investors, leaving in China not only the principal of the original loan, but the interest earned upon it. From the national point of view, China would apparently be paying nothing for the continuous use of the first loan. This would not be true, however, of any single enterprise. If dividends were paid, the proceeds would nominally be remitted to the investor in the United States, while new enterprises would be financed by money coming from the United States. It would be the function of the banks and exchange houses to reduce the operation to the basis of clearing one transaction against another.

The element of the problem thus far ignored is the fact that the obligations of China to the United States would be constantly increasing. But her power of production would

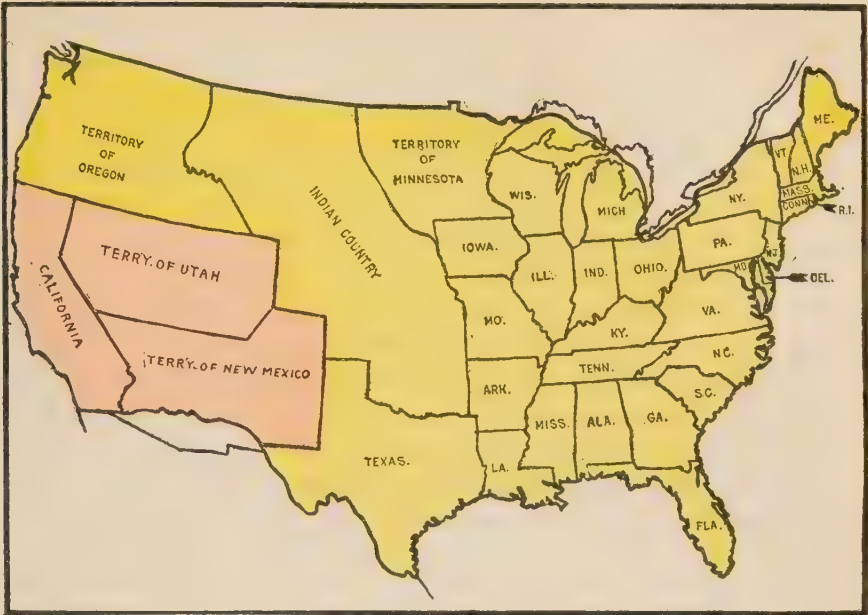
be increasing in an even greater ratio, so that she would be a gainer by the operation in spite of her growing foreign debt. The time would come when she would be able to export more than she imported and buy back her securities, as the United States have been buying back theirs within the last few years by their great excess of merchandise exports. The effect of the investment and reinvestment of American capital in China under such conditions would be to ease the social and economic pressure in both countries. In the United States the first investors in China would spend their dividends in the increased consumption of American products, increasing the demand upon the domestic market and the opportunity for the employment of labor. Those who had new savings would find use for them abroad at a fair return instead of duplicating at home the already sufficient machinery of production and exchange. In Australia, according to official computations, the amount due abroad increased from 1871 to 1898 by nearly \$15,000,000,000 (£294,212,000) while the actual net inflow of goods and money was only about \$50,000,000 (£10,377,000). But this increase of burdens by the process of reinvestment in Australia of interest due abroad, was many times offset by the means which it afforded for building thirteen thousand miles of railway, and thirty-five thousand miles of telegraph lines, developing an annual production in 1897 of \$550,000,000 (£114,463,000), and equipping 4,500,000 people with a greater producing and consuming power than that of any other nation.

The statistics of present or recent trade between the older civilized countries and the Oriental countries have only a limited bearing upon the merits of the question, whether profitable use for capital can be found in the undeveloped countries. If an example is needed, however, that the equipment of the new countries with the full machinery of modern production and exchange makes them valuable customers of the older countries, it is found in the history of Japan. Her export trade to foreign countries was only 14,543,012 yen (\$14,500,000) in 1870 and her imports were only 33,741,637 yen (\$34,000,000). It was after 1876, when orderly government under the mikado had been restored, that Japan rapidly acquired the arts and sciences of modern civilized nations

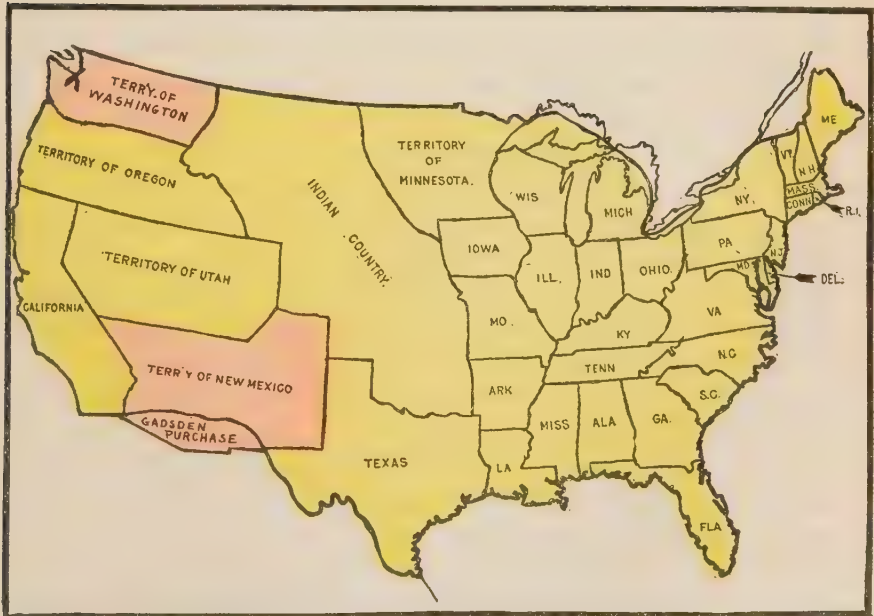








NO. 25.—1850. STATE OF CALIFORNIA AND TERRITORIES OF UTAH AND NEW MEXICO FORMED FROM PART OF MEXICAN CESSION AND AREA PURCHASED FROM TEXAS.



NO. 26.—1853. "GADSDEN PURCHASE" CEDED BY MEXICO FOR \$10,000,000 AND ADDED TO NEW MEXICO. WASHINGTON TERRITORY FORMED FROM NORTHERN PART OF OREGON TERRITORY.



and seemed to spring, like Minerva from the brain of Jove, full armed into the field of commercial competition. Her exports of Japanese products rose to 64,891,683 yen in 1888 and her imports of foreign products almost exactly balanced, at an amount of 65,416,235 yen. Within ten years, in 1898, exports had much more than doubled and imports had increased fourfold. The former were 162,903,212 yen (\$81,000,000) and the latter were 277,270,729 yen (\$139,000,000). Exports to Japan from the United States alone rose from \$2,552,888 in 1880 to \$17,264,688 in 1899. If the question is asked, therefore, with what means the undeveloped countries will pay for the products of the advanced countries, the answer is twofold. First, the undeveloped countries will rapidly acquire purchasing power when they are equipped with modern producing power; second, they will borrow from the older countries their capital, largely in the form of machinery and products, at once paying interest upon the capital and affording a market for the products in which it is lent during the process of development.

The capacity of the undeveloped countries for the absorption of the capital of Europe and America, in creating the splendid equipment for production and transportation with which the older countries are already supplied, is great enough to tax the accumulated resources and the saving capacity of the older countries for many years. With great canals to be constructed, with railways projected from Cairo to the Cape in Africa, across Arabia to British India, across the Sahara Desert from the French possessions in Algeria and Tunis to the heart of "the dark continent," and with the infinite possibilities of China opening before the world, there will be no dearth of opportunity for the investment of capital nor for its productive earnings as these investments are transformed into completed routes of communication. Riches of agricultural production, heretofore untouched, will be developed by modern methods of culture for the benefit of civilization, and the purchasing power of the backward peoples acquired by the sale of their products will make them profitable purchasers in European and American shops and factories. Some hint of these possibilities is thus set forth



in the "Economic Retrospect of the Nineteenth Century," recently presented by the distinguished editor of the "New York Journal of Commerce," Mr. William Dodsworth:

"China's population is about 50,000,000 in excess of that of combined Europe; and yet Europe's railroad plant has cost \$16,500,000,000. The cotton mills of Europe have made a capital outlay of fully \$1,200,000,000. The iron investments of Europe aggregate approximately \$1,800,000,000. These facts, relating to but three industries and yet covering \$19,500,000,000 of industrial capital, suggest the magnitude of the investments, from foreign sources, that would be needed to develop the varied resources of the Celestial Empire to an extent proportioned to its natural wealth, its population, and the thrifty habits of its people. The reconstruction of a nation of 450,000,000 inhabitants would be a magnificent achievement for a century of development and would immensely augment the trade and wealth of the world."

If the reasoning is well founded, that new markets and the necessity for new fields for the employment of capital are essential to keeping in healthy action the social and economic system of the United States, it is plain that equality of opportunity in the Orient is one of our vital problems. This equality of opportunity is what the United States have sought from the beginning of their recent interest in the affairs of Asia. It was frankly recognized in the treaty of Paris, by which peace was made with Spain, as the proper policy for governing our eastern relations. Subjects of Spain were granted, for ten years, the right to trade with the Philippines upon the same terms as citizens of the United States. This meant, under our pledges to extend to other countries the privileges of "the most favored nation," that all that was granted to Spain in this respect was granted also to all commercial nations. When this indication of our liberal policy was followed up by the celebrated correspondence between Secretary Hay and foreign governments regarding "the open door," the United States were committed definitely to the policy of economic freedom in the Orient. It was a new and striking departure for this country, but was substantially the only means of safeguarding our interests in the East unless

we had entered into a struggle with some of the continental powers for Chinese ports and exclusive "spheres of influence."

How much has since been done for enforcing upon other powers the policy of equality of opportunity in the Orient, is known to few persons, even of those who have closely followed the negotiations between the powers in regard to China. The United States may reasonably claim to have been the keystone in the arch of freedom of trade in China. It has been necessary, however, not only to keep the keystone firmly planted, but to resist efforts to remove other stones, by which might be symbolized the continental powers, to prevent the whole arch from toppling to the ground. It is doubtful if any other power could have accomplished what has been done by the United States in this direction. This country has entered the court of Chinese negotiation complying, as no other power could do, with that rule of law, that a suitor should come with clean hands. Our purposes are not suspected, because they are plainly avowed, they appeal to the sense of justice of all peoples, and it is known that they hide no purposes of spoliation or aggression. To keep in restraint half a dozen other powers, eager to take advantage of each other or to spoil China in common, has been no trifling task. That the government of the United States has succeeded in it, even imperfectly, up to the present time, is a remarkable achievement, whether it is followed by ultimate and complete success or not.

The time is close at hand when China is to be opened to civilization and to modern methods of trade by some means or other. There may be said to be three possible avenues along which this development may occur: first, by partition by the powers; second, by a progressive Chinese administration at home; third, by imposing upon China by the concert of the powers the policy of equal opportunity for the people of all civilized states in trading and securing franchises. The first of these policies obviously involves discrimination without limit and the building of walls of exclusion around particular strips of territory,—the adoption of a policy which is only a little less Chinese than that of the Chinese to-day. The second alternative, the development of China from within,

is among the possibilities of the near future. It is becoming clear to enlightened Chinamen that they must at least equip themselves with some of the machinery of modern production and defence if they are not to be overthrown and divided up by the great civilized powers. Appeals to European experts in diplomacy, finance, education, railway construction and many other matters are likely to be made within the next decade with almost as much earnestness by China as they were made a decade or two ago by Japan. The United States could have little fault to find with this process of internal development if the diplomatic policy of China was directed to equal rights for Americans with the people of all other nations.

The American government is in a better position to tender suggestions to China regarding her future policy than any of the cormorant states which have seized her ports, killed and outraged her people, or demanded excessive indemnities for the privilege of spoliating the cities of China. The United States, moreover, are beyond the suspicion of courting an Asiatic power, as Russia might be suspected of doing, from the selfish motive of winning her favor at the expense of civilization. Every enlightened Chinese statesman knows, and every European student of the subject knows, that the policies of the United States in regard to trade and political rights in China will be directed, at least in intent, towards the single end of the advancement of economic freedom and modern civilization. Such partiality, therefore, as the government and people of China may feel towards the United States, cannot be attributed to the sordid motive on our part of sacrificing the interests of civilization to a selfish national policy.

If the vital interests of the American people in the Orient coincide with the interests of civilization, a double obligation is imposed upon them to protect their privileges and opportunities by whatever steps may be required to accomplish the end sought. Whether the United States should actually fight any other power because of developments in China is a problem which can only be answered in relation to events as they arise. Nations have repeatedly gone to war for much



more trivial ends than the maintenance of open markets and economic freedom among four hundred millions of people. They have fought for national honor where perhaps the visible interest of only one of the humblest of their citizens or subjects was involved. The United States have been on the verge of several such conflicts and, if war has been averted, it has been in many cases because it was known or feared that she would fight rather than abandon her rights under the law of nations. Similar questions may easily arise in the future in respect to China or the Philippines. It is not probable, if they arise, that the American people will show themselves more craven than when Preble and Decatur brought the Barbary pirates to their knees, or less generous than when they voted a special customs tax to protect their commercial interests in the Mediterranean. The war of 1812 was fought finally for the vindication of national honor, but the differences which brought it on involved distinctly commercial questions. Great Britain contended for the supremacy of the seas which had long been hers, but which American vessels sought to wrest from her under the privileges of the neutral flag. John Adams, the first of Federalists after Washington, and Thomas Jefferson, the greatest of Democrats, were at one in the idea that freedom of navigation on the ocean and the right to trade to the ports of the world were privileges worth fighting for.

The struggle for commercial opportunities is constantly growing more intense, with the increase in the population taking part in the struggle and in the importance of the prizes contended for. Important changes in the economic relations of the leading countries of the world are threatened during the twentieth century as the result of new routes of communication and the discovery of new sources of raw materials. One of the most important elements in the economy of the future will be the ability to obtain cheap fuel supplies. If it becomes increasingly difficult to extract coal at a reasonable cost from the mines of Great Britain, Belgium, and other European countries, those countries will face the possibility of disasters extending beyond the limits of a temporary crisis and reaching the point of final economic collapse. Economic



changes of a similar character in routes of communication, supplies of raw material, or the sudden rise of more efficient rivals have repeatedly in the history of the world shifted the center of exchanges and transformed a great commercial city into an almost deserted village. To economic causes of this character may be ascribed the fall of Tyre as the mistress of the Mediterranean, the decline of the power of the Greek cities of Asia Minor, the transfer of the seat of the Roman empire from Rome to Constantinople; and in more modern times the successive rise and fall of Venice, the ports of Spain, and the busy maritime cities of Flanders.

Changes in routes of communication contributed in many of these cases to cutting off economical supplies of goods or raw material and making it cheaper to manufacture in rival ports. It is worthy of serious consideration whether Europe is not now approaching a catastrophe of this sort in the competition of the United States, and whether both Europe and America may not face potent rivals in Central Asia since the trans-Siberian railway has linked the Baltic to the Pacific and branches have been extended to the Caspian sea, into the heart of India, and are being constructed across the fertile and populous provinces of China. It is perhaps impossible for the most comprehensive and accurate judgment to anticipate with precision the nature and direction of these future changes in the axis of the world's exchanges. It is obvious, however, that if centers of trade are to arise in Central Asia, if plentiful raw materials are to be found there, and if virgin coal supplies are to contribute to cheaper production, the United States cannot afford to be excluded by the political policy of other powers from a proper share in these opportunities. Nothing in life is so vital as the struggle for existence. It is this struggle to which some of the European powers are becoming aroused by the increasing difficulty of production at home which is economical enough to supply the needs of their crowded populations and permit effective competition with other countries. These European countries, especially Great Britain, learned long ago that they could not raise the food supply of their people so economically as it could be raised in the less developed countries. They followed the

lines of least resistance in turning their attention to manufacturing, in which they long held the mastery by training and skill, control over sources of raw materials, and command of the necessary capital through their organization of the system of credit.

The European countries, having surrendered to a large degree the function of food producers, are now threatened in their later function of manufacturing. A large surplus population, paying high prices for food in proportion to that paid in the food producing countries, have for half a century offset this disadvantage by their efficiency in other directions. Losing this efficiency,—not absolutely, but relatively, because of the improved efficiency of their rivals,—they seem to be approaching a point where their products no longer exchange for the same quantity of food and other articles to which they have been accustomed. The use as an argument in this connection of the balance of trade in favor of the United States during the last three years is subject to many qualifications, but the persistence of this balance may prove to have a bearing upon this vital economic problem. There is force in the suggestion of the late Professor Dunbar, that the intensity of the demand for American products by European countries is much greater than the intensity of the demand for European products by the United States, because what Europe takes is largely food, while what the United States take consists largely of luxuries.

The United States occupy an exceedingly favorable position in the struggle for supremacy in economic life. It is a young country, with natural resources still only slightly trenched upon, and with its food supply at its own doors. There is no reason why it cannot surpass the European countries in all the elements required in the production of all classes of goods, except those under the head of artistic skill, in which it is constantly gaining ground. It is of the first importance for this country as well as the European countries that the foreign market should be open everywhere, not merely as an outlet for the surplus of finished goods resulting from machine production, but as a field for the investment of the surplus savings which result from the world's greatly

increased producing power. The problem of the shifting of the center of the world's exchanges by the exhaustion of sources of food and coal supply, may seem too far distant to be dealt with by the economists of to-day; but it is obviously one of the controlling motives of the European countries in seeking new establishments in Africa and Asia. Some of them evidently hope to find in these establishments new and fertile sources of food supply, fuel, and raw material, and to ease the pressure of the social problem by sending to their new possessions a part of the growing number of hungry mouths, which they are finding it increasingly difficult to feed at home. The United States would not need to compete with the older countries in colonization, if these countries would offer us an open market for our surplus production of goods and capital; but the refusal to grant this freedom imposes upon us the duty of resisting, even by force, if the accidents of national policy and national honor require it, the slamming in our faces of the door of economic opportunity in the Orient.

# TERRITORIAL EXPANSION OF UNITED STATES.

BY O. P. AUSTIN.

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There have been fifteen additions to the original territory of the Union, including Alaska, the Hawaiian, Philippine, and Samoan islands and Guam, in the Pacific, and Porto Rico, in the West Indies; and the total area of the United States, including the non-contiguous territory, is now fully five times that of the original thirteen colonies. The series of maps in this volume show each of these additions to the original territory; also the steps by which the original territory and that added at the various dates were transformed first into territories and then into states as they now exist. In attempting to present to the eye by a series of maps a chronological history of the transition from the original territory of about 700,000 square miles to the present area of 3,770,954 square miles, and from the thirteen original colonies to more than fifty political divisions, only the important steps can be presented, and many comparatively unimportant changes in boundary lines must necessarily be omitted.

The maps in this volume show in outline the territory claimed by the thirteen colonies at the beginning of the war of the revolution; the additional territory included within the boundaries agreed upon between the united colonies and Great Britain at the close of that war; the cession of a part of the territory of the colonies to the common union; the additions to this common territory made by the Louisiana, the Florida, the Mexican, and the Gadsden purchases, the Texas annexation, the settlement of the Oregon claim, the Alaska purchase, and the more recent additions of non-contiguous territory, and chronologically the transition of these various



areas into the states and territories now existing. It is proper to add that the boundaries claimed by the various colonies prior to and at the close of the war of the revolution frequently intersected and overlapped each other, so that certain areas, especially in the Ohio valley, were claimed by more than one of the colonies. It was largely due to these conflicting claims that the colonies decided to obviate the possibility of discord and internal conflict by mutually ceding to the common union that part of the territory in which these conflicting boundary lines overlapped each other. It has not been practicable, in presenting in the first map of the series the outline of the thirteen colonies, to show all of these conflicting boundary lines, but only to indicate those most generally accepted. Nor has it been practicable to determine accurately the area of the original thirteen colonies. The census of 1790 gave the total area at that time at 827,844 square miles, but this included the area added to the original territory of the thirteen colonies by the treaty of 1783, in which Great Britain ceded to them certain territory at the northwest and southwest not originally within their boundaries, but which they then claimed by possession and otherwise, at the termination of the war of the revolution.

The additions of the territory of the United States subsequent to the peace treaty with Great Britain of 1783 are shown by the following table:

ADDITIONS TO THE TERRITORY OF THE UNITED STATES FROM 1800.

Territorial Division.	Year.	Area added.	Purchase price.
		<i>Square miles.</i>	<i>Dollars.</i>
Louisiana purchase .....	1803	875,025	15,000,000
Florida .....	1819	70,107	6,489,768
Texas .....	1845	389,795	.....
Oregon Territory .....	1846	288,689	.....
Mexican cession.....	1848	523,802	18,250,000
Purchase from Texas.....	1850		10,000,000
Gadsden purchase .....	1853	36,211	10,000,000
Alaska.....	1867	599,446	7,200,000
Hawaiian Islands .....	1897	6,740	.....
Porto Rico.....	1898	3,600	.....
Guam .....	1898	175	.....
Philippine Islands.....	1899	143,000	20,000,000
Samoan Islands .....	1899	73	.....
Additional Philippines.....	1901	68	100,000
Total.....		2,936,731	87,039,768

The following table shows the gross area and population of the United States at each of the decennial censuses from 1790 to 1900, exclusive of all non-contiguous territory.

AREA AND POPULATION OF THE UNITED STATES.

Years.	Area.	Population.
	<i>Square miles.</i>	
1790 .....	827,844	3,929,214
1800 .....	827,844	5,308,483
1810 .....	1,999,775	7,239,881
1820 .....	2,059,043	9,633,822
1830 .....	2,059,043	12,866,020
1840 .....	2,059,043	17,069,453
1850 .....	2,980,959	23,191,876
1860 .....	3,025,600	31,443,321
1870 .....	3,025,600	38,558,371
1880 .....	3,025,600	50,155,783
1890 .....	3,025,600	62,622,250
1900 .....	3,025,600	75,695,379

The earliest record of the acquaintance of the white man with the mouth of the Mississippi is the visit of Alvarez de Pineda and his companions in 1519, who, it is said, entered the mouth of the Mississippi and spent six weeks on its banks. Ten years later De Narvaez touched at the mouth of the Mississippi, and in 1541 De Soto crossed the Mississippi at a considerable distance above its mouth, and, after further wanderings, perished on its bank near the mouth of the Arkansas, his followers, after considerable delay, passing down the stream and arriving at its mouth July 18, 1543, turning westward along the shores of the Gulf of Mexico and ending the record of Spanish exploration of the Mississippi.

The French exploration of the Mississippi valley in the following century was from the north, where explorers from their Canadian settlements moved down the Mississippi; but it was not until April 7, 1682, that the first party of explorers, headed by Robert Cavalier de La Salle, reached the mouth of the Mississippi, and on April 9 erected a column and took possession of the country, affixing to the column the arms of France with this inscription: "Louis le Grand, Roi de France et de Navarre, règne; le neuvième Avril, 1682."

La Salle and his followers returned northward shortly, but three years later Henri de Tonty, who had accompanied

him, again visited this spot and replanted, farther from the banks of the stream, the column, which had been thrown down by driftwood.

In 1698 Louis XIV. fitted out an expedition to colonize Louisiana, with Capt. Pierre le Moyne d'Iberville in command. It arrived at the mouth of the Mississippi early in 1699, and built a fort and established the first permanent colony on the eastern side of the mouth of Biloxi bay, communication being maintained at long intervals between this post and the French colonies in Canada.

In 1712 the first regular charter for the government of Louisiana was granted to Antoine Crozat, whose efforts to establish a settlement and develop the country soon proved unsatisfactory and were abandoned in 1718. Another charter was immediately granted to John Law, whose operations seem to have been less disadvantageous to the Louisiana colony than to those of France who became interested in his operations, as William Preston Johnston says that the privilege granted him "finally inured to the benefit of the colony," while other writers indicate that the colony flourished during at least a part of the control of his Mississippi, or West India company.

In 1717 Jean Baptiste de Bienville selected the tract whereon New Orleans now stands as a site for an agricultural and commercial settlement, and in the year following, being appointed governor, sent his chief engineers with a force of 80 convicts, lately arrived from the prisons of France, to clear the land and trace out the plan of a town, which he named Nouveau Orleans in honor of Orleans, then duke of France. From that time until 1722 it was maintained only as a small military trading post, but in August, 1733, it was made the official quarters of the governor of the colony.

The seven years' war in which France and Great Britain contended for the final possession of this continent terminated with the definitive treaty of Paris signed in 1763, which fixed the western boundary of the British possessions along the middle of the Mississippi river from its source down to the Iberville, and thence down the center of that river or bayou and through lakes Maurepas and Pontchartrain to the Mexican gulf.

The Louisiana territory was ceded by France to Spain by a secret treaty on November 3, 1762, which, however, was not made public until 1763, and in 1764 the director-general of Louisiana was directed to acquaint the inhabitants of that province with the act of cession and to turn over the government to the officers of Spain when they should arrive to receive it. The motive of this cession, according to Wallace, "appears to have been to indemnify Spain for her expenses in the war then just closed, and to prevent Louisiana from falling into the hands of Great Britain." He adds, however, that "moreover, the province had become a burden to the French government, of which it was anxious to be disencumbered. It has been computed that France, in her prolonged attempt to colonize Louisiana, expended directly or indirectly nearly \$20,000,000, without receiving any proportionate return."

The Spanish governor, Antonio de Ulloa, arrived at New Orleans March 5, 1766, but his restrictions upon commerce of French citizens with France created such dissatisfaction that a convention of planters on October 28, 1768, passed resolutions praying for a restoration of their former privileges and the expulsion of the Spaniards, and on the passage by the council of a decree requiring the Spanish troops to leave the colony within three days, Ulloa and his troops immediately embarked for Spain. He was succeeded, however, by another Spanish governor, who brought the colony under complete Spanish control.

During the occupancy of the territory by Spain, American colonists experienced much difficulty in maintaining the right of free navigation of the Mississippi, and the opposition of Spain was so great that in 1786 the congress of the confederation, by a vote of 7 to 5, agreed to suspend temporarily its demand for this right, and a treaty was framed by which the claim was to be suspended for twenty-five years, but not relinquished. This, however, proved very unsatisfactory to the population of the Mississippi valley and the entire question was referred to the new government which assumed control in 1789. In 1795 Thomas Pinckney, as envoy extraordinary, negotiated a treaty with Spain by which it was agreed that the navigation of the Mississippi should be free to the citizens



of the United States, and that they should for the space of three years have the privilege of depositing their merchandise in the port of New Orleans and to export it from thence without paying any other duty than a fair price for hire of the buildings in which it might be stored. It was also agreed to renew this privilege at New Orleans at the end of three years or grant a similar privilege at some other point on the banks of the Mississippi.

In the year 1800 the king of Spain, desiring the aid of Napoleon in the erection of the kingdom of Etruria for his son-in-law, the duke of Parma, made an agreement for the retrocession of the Louisiana territory to France as an equivalent for that aid, the French government being quite willing to obtain new territory in America in lieu of that lost to England a few years earlier. This agreement, made October 1, 1800, remained a secret for more than a year, and even then France did not assume control of the territory. In 1802 the Spanish official still in charge at New Orleans abrogated the right of deposit at that city and refused to name any other place as provided by the treaty.

The announcement made in 1802 that Louisiana had been retroceded to France caused great alarm in the United States, whose relations with France had been recently strained through the treatment of the embassy sent in 1797 to adjust the differences between the two nations, and the people of the Mississippi valley especially felt that control of the Louisiana territory and city of New Orleans by France threatened the permanent closing of the Mississippi river against American commerce.

The result of this feeling was a resolution offered in congress authorizing the president to call out 50,000 militia and take possession of New Orleans, but a substitute was adopted appropriating \$2,000,000 for the purchase of New Orleans, and on January 10, 1803, James Monroe was sent as minister extraordinary to co-operate with our minister to France, Robert R. Livingston, for the purchase.

Monroe, on his arrival in France, found that negotiations for the purchase of New Orleans had been begun by Minister Livingston, and the commissioners were surprised by a counter

proposition from Napoleon's representative, Barbé-Marbois, in which he offered to sell all of the Louisiana territory to the United States, suggesting 100,000,000 francs as the price; and the commissioners, although they had not been authorized to negotiate for more than the city of New Orleans, offered \$10,000,000, and on the following day, April 13, an agreement was reached for the sale to the United States of the entire Louisiana territory for \$15,000,000, of which \$11,250,000 was to be in the form of 6 per cent United States bonds, and the United States to assume the payment of certain claims of American citizens against the French government, amounting to \$3,750,000. This treaty reached Washington for ratification July 14, congress was called into special session October 17, and the treaty confirmed by the senate after two days of discussion, and on October 28 a resolution to carry it into effect was passed after much opposition by many who expressed the belief that the territory was not worth the price proposed to be paid, and that its control would be difficult and unprofitable.

The Spanish representatives were still in control at New Orleans and in possession of the entire territory when the treaty was ratified, and the Spanish representatives at Washington insisted that France had not carried out her agreement for the cession by Spain to France, and therefore the cession to the United States was void. Nevertheless the French chargé at Washington directed the representative at New Orleans to transfer that city and territory to the representatives of the United States. The message reached New Orleans November 23, 1803, and after some consultation the Spanish governor handed the keys of the city to the French representative, who on December 20 surrendered them to the representatives of the United States government, who assumed control of the city and territory.

The population of the Louisiana territory at the date of its cession to the United States was probably not far from 100,000. A volume written by M. Wante in Paris in 1803, states the population of the territory at that date to be 50,100 whites, 39,820 blacks, and 10,340 mulattoes; total 100,260. The bishop of the province estimated the population of his

jurisdiction at that date at 144,000, but his jurisdiction included Pensacola and Mobile. The census of 1810 shows the population of 97,401 for the entire area, of which 76,556 were accredited to Orleans territory occupying the extreme southern portion of the purchase, and 20,845 to the remaining section of the Louisiana purchase.

After the cession of 1803 questions arose between Spain and the United States as to whether the cession included any territory east of the Mississippi other than New Orleans. The claim of the United States was that the original Louisiana territory extended a considerable distance east of the Mississippi; and although this was not admitted by Spain, congress in 1804 passed an act for collecting duties in the disputed territory and placed it under the jurisdiction of Louisiana territory. In September, 1810, the inhabitants of this section (i.e., of West Florida) declared themselves independent of Spain and notified the president of the United States of that fact, asking recognition as a part of the United States, and on October 27 of that year President Monroe by proclamation extended the claim of the United States over the territory in question and authorized the government of New Orleans territory to take possession. In 1812 an act was passed enlarging the limits of Louisiana and including the area in controversy.

The process by which the Louisiana purchase was transformed into its present political divisions was as follows:

1803.—French cession of province of Louisiana, comprising entire Louisiana purchase.

1804.—The territory of Orleans established with boundaries practically identical with those of the present state of Louisiana. The remainder of the Louisiana purchase was designated as the district of Louisiana.

1812.—The territory of Orleans admitted to the union as a state under the name of Louisiana and name of the territory known as Louisiana district changed to the Missouri territory.

1819.—Territory of Arkansaw formed, including present state of Arkansas and a large part of present Indian territory and Oklahoma. In 1824 an act was passed fixing western



boundary, and excluding from limits of Arkansas territory practically all of that territory now known as Oklahoma and a part of that now known as Indian Territory. In 1828 the western boundary line was again changed and made practically identical with present western boundary of Arkansas, and the territory thus defined was admitted as state of Arkansas June 15, 1836.

1821.—State of Missouri formed, the boundaries nearly identical with those now existing (except as to the northwest corner), the remaining undivided area of the Louisiana purchase retaining the title of Missouri territory until 1834, when it was given the title of the Indian Country.

1838.—Territory of Iowa formed, including present state of Iowa, and extending thence northward to the Canadian line and including all territory between Mississippi and Missouri rivers, comprising most of present state of Minnesota and eastern portion of the present states of North and South Dakota. In 1845 an enabling act was passed for the admission of Iowa as a state, its northern boundary being somewhat farther north than at present and its western boundary an arbitrary line running due north and south, excluding all that portion fronting upon Missouri river and including in the then limits of Iowa about two-thirds of the eastern portion of the state as at present defined. This, however, was not accepted, and in 1846 another enabling act was passed by which the western boundary was extended to the Missouri river and the present northern boundary established.

1849.—Territory of Minnesota organized, comprising the area of the present state of Minnesota and that part of North and South Dakota lying east of the Missouri river; admitted as a state in 1858; western portion of the territory not included in the state was in 1861 combined with a part of Nebraska and organized as territory of Dakota. Minnesota also includes about 52,319 square miles of the area of the original thirteen states.

1854.—Territory of Kansas organized, with practically its present boundaries, except that its western limit extended to the summit of the Rocky mountains and included a part of the present state of Colorado. In 1861 Kansas was admitted



as a state, and the western boundary line changed to its present location.

1854.—Territory of Nebraska formed, with its southern line identical with the southern line of the present state of Nebraska, but extending westward to the Rocky mountains, the territory thus including all that area between the southern line above described and Canada on the north, the Missouri river on the east, and the Rocky mountains on the west. The northern portion of this area was designated in 1861 as the territory of Dakota, and in the same year the formation of the territory of Colorado removed a section from the southwestern portion of the area then designated as Nebraska, while in the formation of the territory of Idaho in 1863 the western boundary of Nebraska was fixed at about its present location. Admitted as a state March 1, 1867.

1861.—Territory of Dakota organized from parts of Nebraska and Minnesota territories. Its eastern boundary was practically identical with that now separating the state of Minnesota from North and South Dakota, and its southern boundary identical with that separating Nebraska from South Dakota, and extending westward to the summit of the Rocky mountains, and thence northward to the Canadian line. In 1863 the western portion of Dakota was transferred to the territory of Idaho, and in 1889 the boundary between North and South Dakota was named, and the two sections severally admitted as states.

1861.—Territory of Colorado organized, with boundaries identical with those of the present state of Colorado, being made up from portions of Idaho, Utah, New Mexico, Kansas, and Nebraska, the northeastern section being taken from the Louisiana purchase, the central and southeastern portion from the Texas annexation, and all of the remainder from the Mexican cession.

1863.—Territory of Idaho formed from parts of Nebraska, Dakota, and Washington territories, and included, besides the present state of Idaho, all of the territory now known as Montana and Wyoming. Its boundaries were, therefore, Dakota, and Nebraska on the east, Colorado, Utah, and Nevada on the south, Oregon and Washington on the west,

and Canada on the north, the portion east of the Rocky mountains being taken from the Louisiana purchase, and that west of the Rocky mountains from the territory of Oregon.

1864.—Montana territory was formed from the northeastern portion of Idaho territory.

1868.—Wyoming territory formed from the southeastern part of the Idaho territory; in 1890 Idaho and Wyoming admitted as states. Wyoming is the only state which contains within its boundaries territory originally included in four different additions to the territory of the United States, viz., parts of the Louisiana purchase, the Texas territory ceded to the United States, the Mexican cession, and the Oregon territory.

The land area of the Louisiana purchase exceeds that of the original thirteen states, being 875,025 square miles, against a land area of 820,944 square miles in the original thirteen states. The states and territories which have been created in whole or in part from its area number fourteen, and their population in 1900 was 14,708,616, against a population of less than 100,000 in the territory at the time of its purchase.

Their total area is nearly one-third that of the entire union, and their population about one-fifth that of the entire United States. They produced in 1904, 329,000,000 bushels, their total wheat production being nearly 60 per cent of that of the entire United States. They produced 1,061,544,000 bushels in 1904, their total corn crop forming over 43 per cent of the total corn crop of the United States. Of oats they produced in 1904 377,340,000 bushels, or 42 per cent of the total product of the country. Their production of barley in 1904 was valued at over \$26,500,000, and of rye at over \$2,730,000, while their production of Irish potatoes in 1904 was over \$34,000,000, of hay (1903) \$117,000,000, and of cotton (1903) \$46,500,000. The total value of the agricultural products of the states formed from the Louisiana purchase, including in that category simply wheat, corn, oats, barley, rye, hay and potatoes, was in 1904, \$932,180,564. The wool

product of these states amounted in 1904 to 90,752,000 pounds, or 30 per cent of the total wool product of the United States, with an estimated value of about \$16,160,000, or more than the cost of the entire area. The value of the farm animals in these states on January 1, 1904, was \$1,122,-870,000. Add to these easily measured farm products the estimated value of the wool, the sugar, the dairy, and poultry products, and the proportion of the live stock annually turned into provisions, and it may be safely estimated that the agricultural products of a single year amount to one hundred times the original cost of the area; or, in other words, that its cost is repaid by 1 per cent of the agricultural productions of each recurring year.

The product of the mines is also of very great value. The coal produced in this area in 1902 amounted to 30,000,000 tons; the iron ore to 15,859,000 tons; the silver product to \$37,837,576 in coining value, and gold \$39,841,500.

The prosperity shown by these figures is further evidenced by the banking institutions of the states formed from this territory. Their capital stock amounted in 1903 to over \$103,000,000; their circulation to \$56,453,000; their loans and discounts to \$502,412,000, and their total resources to \$1,713,800,000, while a still more gratifying evidence of the prosperity of this section is the fact that individual deposits in national banks in 1903 amounted to \$471,220,000.

A study of educational conditions shows equally rapid and gratifying development. The pupils enrolled in the public schools in the states in question in 1902 was 3,426,593; the teachers employed numbered 110,263, and the expenditure for public schools was \$45,301,677. The number of pupils in attendance at high schools in 1902 was 131,271, with 5,964 teachers; in attendance at normal schools, 14,033 students, with 580 teachers, and at higher educational institutions, 45,802 students and 4,446 teachers. The total figures of the number of teachers and attendance of scholars for schools and educational institutions in the fourteen states formed from the Louisiana purchase show: teachers, 121,253; attendance, 3,617,699.



The number of newspapers and periodicals published in this area in 1903 was 5,741; the number of postoffices was 16,437; the miles of railway in operation in 1902 were 62,403 miles, or nearly 31 per cent of the total railway mileage of the country.

The power of this vast area with its agricultural and mineral wealth to sustain a population much greater than that which it now supports is suggested by a comparison of its area with the area and population of the prosperous countries of Europe. The total area is 875,025 square miles and is slightly less than that of the United Kingdom, Netherlands, Belgium, Germany, France, Spain, Italy, and Switzerland, whose total area is 885,978 square miles, with a present population of 202,363,573, as against a population at the last census of 14,708,616 in the territory under consideration, whose agricultural and mineral possibilities fully equal those of the European states named.

The French and Spanish contended for the territory now known as Texas in the early period of its history, but in 1762 the cession of Louisiana by France to Spain terminated the contest between the French and Spanish for control of this territory, which, however, was renewed between the Americans and the Spanish on the cession of the Louisiana territory to the United States. Spain claimed not only all of the present state of Texas, but territory east of the Sabine river, while the United States claimed title as far as the Rio Grande.

From 1806 to 1819 the question was undetermined, and this period was marked by numerous invasions or attempted invasions by parties of Americans, beginning with the projected movement of Aaron Burr and including the engagement of San Antonio in 1813, in which all but 100 of a force of 2,500 Americans and Mexicans were slain, and nearly 700 of the peaceable inhabitants of San Antonio murdered.

In 1819 the boundary between Texas and the United States was fixed at the Sabine river.

In 1820 Moses Austin, who was then residing in Missouri, received a grant of land in Texas from the Spanish authorities of Mexico, and his son, Stephen F. Austin, conducted a colony



to a point near the present city of Austin, and this was soon followed by other colonies.

In 1824 Texas and the province of Coahuila were established as a Mexican state, and a Mexican commandant placed in charge. His treatment of American citizens created great dissatisfaction, and in 1833 the American settlers, who at that time numbered fully 20,000, held a convention, prepared a state constitution, and sent Col. S. F. Austin to the city of Mexico to request that Texas be established as a separate state of the Mexican republic. He was detained until 1835 and Mexican troops sent to occupy the territory. Several engagements occurred during 1835 in which the Texans were successful, and in November, 1835, a provisional government was formed, Henry Smith elected governor, Sam Houston commander in chief, and S. F. Austin a commissioner to the United States. On December 22 a declaration of independence was issued. Santa Anna, then president of the Mexican republic, entered the state at the head of 7,500 men, suppressed the revolt, and during this period occurred the storming of the Alamo, a fort near San Antonio, and the slaughter of its garrison numbering 172 men, who on its capture after eleven days' siege by 4,000 Mexicans, were all slaughtered except 3 persons—a woman, a child, and a servant—the Mexican loss during the siege being 1,600. General Houston, in command of the Texan troops, finally succeeded in defeating the Mexican forces and captured Santa Anna, ending the war; and in September, 1836, Houston was elected president, and on October 22 inaugurated.

In March, 1837, the United States acknowledged the independence of Texas, and similar action was taken by France in 1839, and by England, Belgium, and Netherlands in 1840. In August, 1837, the minister of the republic of Texas made application to the executive for membership in the United States, but the proposition to that effect introduced in the senate by Preston, of South Carolina, was tabled by a vote of 24 to 14.

In 1843 President Tyler made propositions to the president of Texas for its annexation to the United States, and a treaty

to that effect was framed on April 12, 1844, and submitted to the senate, but rejected June 8.

In January, 1845, the house of representatives, by a vote of 120 to 98, passed a resolution providing for the annexation of Texas, and after long discussion it passed the senate by a vote of 27 to 25, and on March 1 was approved by President Tyler, three days before the close of his term, and a representative sent to Texas to submit the proposition. A convention, called by the president of Texas, approved the proposition for annexation (July 4, 1845) and prepared a state constitution, which was approved by popular vote, and on December 29, 1845, a joint resolution of congress declared Texas admitted into the union as a state.

The boundaries of Texas as admitted differ materially from those forming the present limits of the state, having included the eastern half of the present territory of New Mexico, the central portion of the present state of Colorado, and a small section in the present states of Wyoming and Kansas. In 1850 Texas ceded to the United States that portion of its territory outside its present state lines and was paid \$10,000,000 in bonds, which sum was applied to the payment of the state debt.

Provision for the division of Texas into five states was made by the joint resolution of congress by which Texas was admitted. It provided that "new states of convenient size, not exceeding four in number in addition to the said state of Texas, and having sufficient population, may hereafter, by consent of said state, be formed out of the territory thereof, which shall be entitled to admission under the provisions of the federal constitution." Of this Alexander Johnson, the historian, says: "It is now practically impossible to obtain any such consent from the state, and its size must remain undiminished until the development of separate interests within it shall produce a division naturally." Apropos to this suggestion, it may be said that the present area of Texas is about 50 per cent greater than that of Ohio, Illinois, Kentucky, and Tennessee combined, and is nearly equal to the combined area of Georgia, Florida, Alabama, Mississippi, and Louisiana. It could retain its present distinction of

being the largest state of the union and yet spare sufficient territory to make four states equal in size to the group known as the middle states—New York, New Jersey, Pennsylvania, and Delaware—whose combined population is 15,638,531. The present area of the state exceeds that of England and Germany, whose combined population is now over 85,000,000.

The recent development of the state of Texas is suggested by the fact that its population increased from 2,235,523 in 1890 to 3,048,710 in 1900; its corn production from 63,802,000 bushels in 1890 to 140,750,733 bushels in 1903; its oats from 11,059,000 bushels in 1890 to 32,475,613 bushels in 1903. The value of its cotton crop increased from \$67,764,000 in 1888 to \$92,187,000 in 1899, and the value of its farm products, including wheat, corn, oats, barley, rye, hay, and potatoes, increased from \$61,222,107 in 1890 to \$105,318,130 in 1903, while the value of its cattle increased from \$75,227,000 in 1890 to \$98,088,436 in 1904.

The number of national banks in the state increased from 189 in 1890 to 369 in 1903; their circulation from \$3,821,000 in 1890 to \$10,647,000 in 1903; their loans and discounts from \$48,814,000 to \$87,967,000; their total resources from \$83,099,000 to \$152,200,000, and their individual deposits from \$30,450,000 in 1890 to \$71,382,000 in 1903.

The number of pupils enrolled in the public schools in 1890 was 466,872, and by 1902 had increased to 712,629. The number of teachers in the public schools in 1890 was 10,880, and in 1902 16,170. The total expenditure for public schools in 1890 was \$3,178,300, and in 1902, \$5,216,672; and the attendance at schools of all classes, including public schools, high, and normal schools, and higher educational institutions, was in 1890, 476,992, and in 1902, 738,239.

The number of post offices during the period from 1890 to 1903 increased from 2,248 to 3,313; the number of newspapers and periodicals from 542 to 770, and the miles of railway in operation from 8,710 in 1890 to 10,874 in 1902.

The first historical account of the visit of the white man to the great area north of the Rio Grande formerly known as New Mexico is that of the wanderings of Cabeza de Vaca, who accompanied De Narvaez to Florida in 1528, and after



the movement of De Narvaez and party westward along the gulf coast and the subsequent death of De Narvaez and some of his party, made his way with the few remaining followers across the continent, reaching San Miguel in Sonora in May, 1536. His accounts of the trip led to the exploration of the country in question, subsequently called, respectively, New Mexico and California. In 1539 Marcos de Niza visited the country, and in the following year Coronado crossed the country north of the Gila eastward beyond the Rio Grande among the Pueblo Indians, who then occupied the country, and they were followed by others. Toward the close of the century Juan de Oñate was sent by the viceroy of Mexico to take formal possession of the country in the name of Spain and establish colonies, missions, and forts. This date is variously stated at from 1595 to 1599. Missions were established, mines opened and worked, and the enterprise flourished until the Indians rebelled against enslavement, and in 1680 drove the Spaniards out. In 1698 the Spaniards regained possession of the country, and it remained a province or state of Mexico until 1846.

The annexation of Texas in 1845 was quickly followed by war with Mexico, the direct cause being a disagreement as to whether the Nueces river or the Rio Grande formed the true boundary between Texas and Mexico, the Mexican government claiming all territory south of the Nueces, and the United States claiming the territory between the Nueces and the Rio Grande. War with Mexico was declared in May, 1846. Immediately following this declaration Gen. Stephen Kearny, who had command of the army of the west, was ordered to take possession of the area known as New Mexico, and in June set out from Fort Leavenworth with 1,600 men, crossed the country and took possession of Santa Fe, the capital of New Mexico, August 18, 1846. He then took formal possession of the state and appointed Charles Bent provisional governor and moved westward, his original instructions having been to conquer California as well as New Mexico.

The earliest recorded visit of the white man to California is that of an expedition sent from Mexico in 1534 by Cortez,



then governor of that country, to explore the country northward. A romance published in Spain many years earlier had described the doings of a queen of amazons who ruled an island rich in gold, diamonds, and pearls "on the right hand of the Indies, known as California," and Cortez and his lieutenant, Grijalva, believing that they were in the neighborhood of the coast of Asia, called the country thus discovered "California."

The first settlements made in the country thus named were those of the Jesuit missionaries, who were located in lower California in 1683. Sir Francis Drake had in 1578 passed up the western coast of America and touching temporarily at a bay on the western coast, believed by some to have been the Bay of San Francisco, called the country New Albion, or New England, remaining, however, but a very short time. Explorations northward from the settlements in old, or lower, California were made only in the following century, and the first mission planted in upper, or "Alta," California, as it was termed in the Spanish language, was established at the present site of San Diego in 1769. The Bay of San Francisco was not reached until 1770, and a mission was established there in 1776. Eighteen missions had been established by the close of the century, with over 15,000 converts among the Indians.

The Spanish power in Mexico was overthrown by the revolution of 1822, and California passed under control of the new governor of Mexico, which deprived the missions of their control of the Indians, secularizing the government of the section then known as California. Ten years later immigrants began to arrive from the United States, and when the war with Mexico began in 1846 many thousands of citizens of the United States were residents of California, which, however, was still a part of Mexico.

Capt. John C. Frémont had been sent in 1845 by the government to explore the maritime region of Oregon and California, and in May, 1846, received instructions to watch the movements of the Mexicans in California, who, it was believed, were disposed to hand the province over to the British government. He hurried to California, and finding

the Mexican general marching against the American settlements, engaged his forces successfully, and on July 5, 1846, the Americans in California declared themselves independent and elected Frémont governor of the province. Meantime Commodore Stockton had arrived with authority to conquer California, and he and Frémont jointly took possession of Los Angeles.

General Kearny, whose instructions on leaving Fort Leavenworth for New Mexico had been to "capture New Mexico and California," arrived in California in December, 1846, with a small part of his command, and refusing to sanction the election of Frémont as governor, in February, 1847, assumed that office himself and declared the annexation of California to the United States.

The war between the United States and Mexico terminated by the treaty of Guadalupe Hidalgo, signed February 2, 1848, and ratified by the senate March 10, 1848. It transferred to the United States both New Mexico and California, the price being, according to Johnston, the historian, "\$15,000,000, besides assumption by the United States of \$3,250,000 in claims of American citizens against Mexico."

The territory included that part of New Mexico east of the Rio Grande, which was also claimed by Texas, and the disputed claim of Texas was afterwards, in 1850, settled by the payment of \$10,000,000 by the United States to the state of Texas in full satisfaction of her claim. During the next five years disputes arose as to whether the Gila river constituted the boundary line of that section now known as Arizona and New Mexico, and in the latter part of 1853, by the Gadsden purchase, the United States obtained from Mexico, on the payment of \$10,000,000, the disputed territory as well as the right of free transit of troops, munitions, mails, and merchandise over the isthmus of Tehuantepec.

The area added to the United States by the original Mexican cession, according to Johnson, was 523,802 square miles, and by the Gadsden purchase, 36,211 square miles. Commissioner Hermann, in his "Louisiana Purchase," page 69, gives the area of the Mexican cession as 522,568 square miles, and the Gadsden purchase, 45,535 square miles.

The Oregon territory had been long in dispute between the United States and Great Britain. Ferrelo, a Spaniard, had made exploring voyages along the coast in 1543. Sir Francis Drake moved northward along the Oregon coast in 1578, after his landing on the coast of California, described in the brief history of California above given; and several Spanish explorers visited the country between 1592 and 1775. In 1792, Capt. Robert Grey, a trader from Boston, entered the mouth of the Columbia and thus laid the foundation of the American title to Oregon. In 1805 the Lewis and Clark exploring expedition dispatched by President Jefferson after the purchase of Louisiana, crossed the Rocky mountains and following down the Columbia river, reached the Pacific coast at the mouth of the Columbia in November of that year, returning eastward in the spring of 1806.

In 1811 John Jacob Astor and others established a fur trading post at the mouth of the Columbia, calling it Astoria, and in 1833 immigration to that region overland began, and by 1850 thousands of settlers from the United States had reached Oregon. The British government, however, made claim to the section, and in 1813 captured Astoria, the settlement founded by Astor's Pacific Fur company, but in 1818 a treaty of joint occupation was made with the United States and Astoria restored to United States jurisdiction. From 1818 to 1846 the country was jointly occupied by the United States and Great Britain. In that year a treaty was made by which the forty-ninth parallel and the Straits of Fuca were made the northern boundary of the United States possessions in the Oregon territory, and the treaty was ratified June 15, 1846. An organic law had meantime been framed and accepted by the American settlers, and this formed the basis for a provisional government until congress, in 1848, created the territory of Oregon, which comprised all of the United States territory west of the summit of the Rocky mountains and north of the forty-second parallel, and on March 3, 1849, the territorial government went into effect, with Joseph Lane as governor.

The discovery, exploration, settlement, and transfer to the United States of each of the above outlined sections—



New Mexico, California, and Oregon—are given consecutively, since their definite addition to the territory of the United States and their formation into territories and states are practically simultaneous.

The population of New Mexico, California, and Oregon territories, by the census of 1850, the first taken after their acquisition, was as follows: New Mexico, 61,547; California, 92,597; Oregon, 13,294; total, 167,438.

New Mexico was governed by the military until 1850, when a territorial government was organized by act of congress.

The discovery of gold in California, in 1848, attracted a large population, and the necessity for a substantial government becoming quickly apparent, a convention of delegates was called by the military governor of the territory, General Riley, to meet at Monterey, September 1, 1849. The constitution which it prepared was adopted on submission to the people, and California admitted as a state September 9, 1850, after a prolonged discussion in congress over the slavery question, which delayed final action, but it was not until several years later that control by vigilance committees of the heterogeneous population, drawn thither by the gold discoveries, terminated.

The process by which the Mexican cession and Oregon territory were transformed into their present political divisions was as follows:

1846.—Control of Oregon territory by the United States settled by treaty with Great Britain.

1848.—Mexican cession of New Mexico and California.

1850, September 9.—State of California admitted and Utah territory formed from northern portion of Mexican cession lying east of the northern part of California.

1850, December 3.—Territory of New Mexico formed from that part of Mexican cession not included in California and Utah, also including part of territory claimed by Texas, for which Texas was paid \$10,000,000.

1853.—Gadsden purchase, \$10,000,00; made part of the territory of New Mexico. Washington territory formed from the northern part of Oregon territory.



1859.—Western part of Oregon territory admitted as a state and eastern part temporarily attached to Washington territory.

1861.—Territory of Nevada organized from western part of Utah, and territory of Colorado organized from eastern part of Utah, western part of Nebraska, and northern part of New Mexico and northwestern part of Kansas.

1863.—Idaho territory formed from the eastern part of Washington territory and western part of Dakota territory. Arizona territory formed from western part of New Mexico.

1868.—Montana formed from the northeastern part of Idaho.

The territory added by the Mexican cession had, as above indicated, a population of 165,524 at the census of 1850, the first enumeration after the purchase. In 1890 it was 1,675,009, and in 1900, 2,122,378. This does not include any part of the state of Colorado, of which about one-third falls within the Mexican cession, but does include all of New Mexico, which is formed in part from territory which was claimed by Texas. The wheat production of the five states and territories now representing the Mexican cession was, in 1890, 33,066,000 bushels; in 1903, 26,388,929 bushels. The barley crop of 1903 was 32,015,863 bushels, valued at \$19,644,567, and the hay crop alone in 1903 was valued at \$29,434,023, or twice as much as the sum paid to Mexico (exclusive of the agreement to settle the claims of American citizens, amounting to \$3,250,000) for the entire territory. The states and territories in question produced in 1903 more than one-sixth of the wool grown in the United States, their total wool production being in 1903, 49,332,250 pounds, out of a total in the United States of 287,450,000 pounds. The total value of the production of wheat, corn, oats, rye, barley, hay, and potatoes in these five states and territories in 1903 was \$84,887,194, or practically five times the sum paid for their purchase. The number of horses and mules in 1903 was 856,883, and their value, \$42,657,965. The number of cattle on January 1, 1904, was 3,968,873, valued at \$77,109,812, against \$57,713,266 in 1890. The number of sheep in 1904 was 10,491,452, against 10,583,146 in 1890, and their value

in 1904, \$23,731,710, against \$19,039,162 in 1890. The total value of farm animals in the five states and territories formed from this purchase was, in 1904, \$147,855,933, or more than eight times its original cost. The silver production in 1902 was \$24,538,505 (coining value); and the gold production in 1902, \$27,925,300, against \$17,830,000 in 1890.

The growth in educational facilities during the decade in the states and territories in question is shown by the fact that the pupils enrolled in public schools numbered in 1890, 292,626, and in 1902, 419,247; the number of teachers in public schools increased during that period from 7,081 to 11,151, and the total expenditure for public schools from \$6,010,242 to \$9,840,290; and the total attendance at schools of all classes had increased from 312,945 to 453,802 and the number of teachers employed from 8,390 to 13,395.

The number of post offices increased from 2,182 in 1890, to 2,818, in 1903; the number of newspapers and periodicals published from 725, in 1890, to 900, in 1903, and the miles of railway in operation from 9,022 to 12,311. An additional evidence of the general prosperity of the citizens as a class is shown by the fact that the individual deposits in national banks increased from \$25,517,000, in 1890, to \$87,669,000, in 1903; the circulation of the national banks in these states and territories from \$1,834,000 to \$11,650,000, their loans and discounts from \$28,569,000 to \$77,110,000, and the total resources of all banking institutions (national, state, private, and savings banks) in these states and territories from \$284,744,000 to \$636,500,000.

The population of the three states formed from the original Oregon territory was in 1890, 747,524, and in 1900, 1,093,411. Their production of wheat in 1890 was 22,306,000 bushels, valued at \$16,851,802, and in 1903, 37,553,159 bushels, valued at \$27,214,465. The value of the hay crop was in 1894, \$15,655,831, and in 1903, \$24,129,350. The wool produced was in 1894, 31,297,223 pounds, and in 1903, 37,060,000 pounds. The value of cattle on farms and ranches was in 1890, \$34,316,643, and on January 1, 1904, \$32,389,838; of sheep, in 1890, \$8,239,875, and on January 1, 1904, \$16,380,144; and of all farm animals on January 1, 1904,

\$84,137,003. The gold produced in 1902 was valued at \$3,-563,900, and of silver, \$8,490,795 (coining value). The number of pupils in public schools was in 1890, 133,529, and in 1902, 283 400, and the expenditure for public schools was, in 1890, \$1,933,110, and in 1902, \$5,297,318. The number of post offices was, in 1890, 1,515, and in 1903, 2,316. The banking resources were, in 1890, \$59,286,000, and in 1903, \$118,400,000,

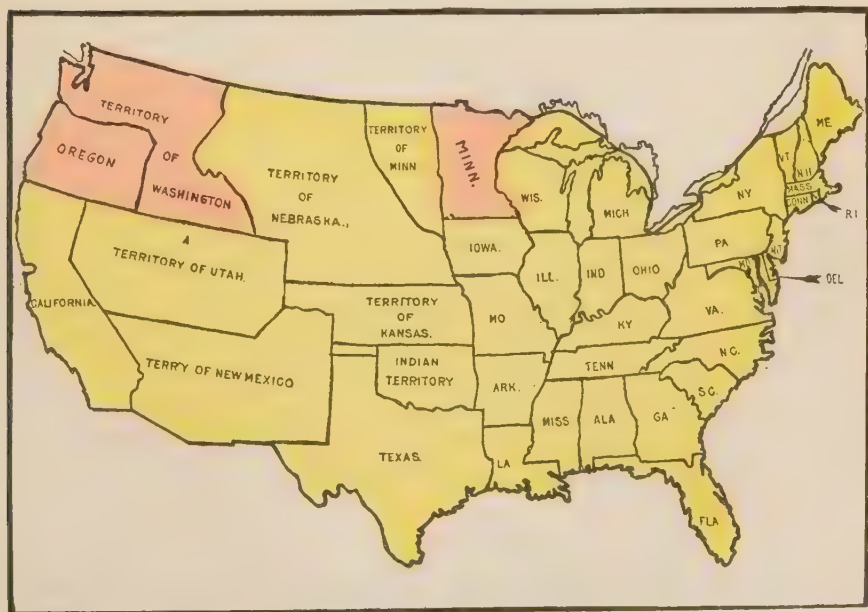








NO. 27.—1854. UNORGANIZED PORTION OF LOUISIANA PURCHASE (THEN KNOWN AS THE INDIAN COUNTRY) ORGANIZED AS TERRITORIES OF KANSAS, NEBRASKA, AND INDIAN TERRITORY.



NO. 28.—1858-1859. STATE OF MINNESOTA FORMED FROM EASTERN PART OF THE TERRITORY OF MINNESOTA (1858). OREGON ADMITTED AS A STATE, AND EASTERN PART OF OREGON TERRITORY ATTACHED TO WASHINGTON TERRITORY (1859).



## WHAT WE HAVE DONE FOR THE PHILIPPINES.

BY LUKE E. WRIGHT.

[Luke E. Wright, president United States Philippine commission; born in 1847 in Tennessee; was attorney-general for eight years and became prominent in the relief measures taken during the yellow fever scourge of 1878; in 1903 received the degree of LL.D from Hamilton college; in the same year was appointed member of the United States Philippine commission.]

The civil commission of the Philippines bore to these islands a message of peace and good will from the American people to the Filipino people. The instructions which President McKinley gave were definite and explicit and were made known before the commission left the United States. We assumed the responsible duties with which he had honored us, fully understanding their tenor and assenting to their wisdom and justice. Whatever differences of opinion may exist as to the soundness of the policy enunciated in those instructions, there can be none among conscientious and honorable men that we were and are fully committed to their execution. We understood fully that while opposition to American authority, when it took the form of an armed insurrection, must be met and put down by the military forces of the United States; at the same time we realized with equal clearness that a true peace could only be established by obtaining the confidence and co-operation of the educated and patriotic Filipinos. We further believed that it was true American doctrine that the people affected by government should have as large a participation in that government as they were capable of safely exercising in their own interests; and that the fullest opportunity should be given them to test their abilities by actual participation in the administration of their own affairs. It was not believed to be either just or politic to impose upon them a government modeled strictly upon American lines and administered wholly by Americans.

Acting upon these general principles, Governor Taft and his colleagues, from the beginning, endeavored to pursue a



policy of attraction; and at every step invited and welcomed the advice and assistance of those Filipinos whom they believed competent to be of service in establishing good government.

The future must largely determine whether we have wrought well or badly. We perhaps stand too near to the stirring events which have thronged the years of American occupation of these islands to judge dispassionately the value of what has been accomplished. The substitution of American theories of government and methods of administration for those which had obtained for hundreds of years under the Spaniards has been carried on with the characteristic energy which is the distinguishing feature of the American. And naturally there have arisen differences of opinion as to the wisdom of our course not only among observing foreigners and Americans but among Filipinos as well. There are not wanting critics in the former class who think the commission has gone too fast and too far; and, on the other hand, there are not wanting impatient Filipinos who, forgetful of what has already been done, complain that we are moving too slowly. I am not the proper person to discuss, upon their merits, these differences of opinion. That we have made mistakes I shall not controvert. The man or men, however, who do not make mistakes are only those who accomplish no serious or permanent work. I think, however, we may justly claim at least the benefits of good intentions and honest efforts. It seems to me, furthermore, that when a comparison is made between the situation as it existed at the beginning of American occupation and as it exists now, even the least observant or the most censorious must be struck with the marvelous change for the better. Then there was a blaze of insurrection extending from one end of the archipelago to the other; to-day general peace prevails. Then life and property were only secure in those towns garrisoned by American troops who occupied several hundred stations; to-day the number of our troops has been reduced by more than three-fourths, occupying only a few strategic points, and yet with the exception of the occasional depredations committed here and there by insignificant and fugitive bands of ladrones, life and

property are as secure in these islands as in other well ordered communities.

I do not for a moment pretend that this gratifying change has resulted wholly from the labors of the commission. Unquestionably in the mere suppression of insurrection the chief credit is due to the efforts of our gallant army and navy. But I think I may say, without the imputation of egotism or the desire to unduly exalt the commission, that but for its efforts to establish in the minds of the intelligent and thoughtful Filipinos a conviction as to the rectitude and benevolence of the intentions of the American people with reference to them, and thereby securing, in a multitude of instances their cordial and zealous co-operation in the establishment of peace and order, these gratifying conditions would not now exist. We have reposed trust and confidence in many Filipinos, and it is but simple justice to say that rarely has that trust and confidence been abused. To-day, pursuant to legislation enacted by the commission, the Filipinos have in all their local affairs self-government as Americans understand that term. They are largely represented upon the commission, in the judiciary, and in the other branches of the government. They constitute the body of the constabulary who have been for the past two years charged with the duty of maintaining order and have done and are doing most faithful and efficient service. They have the benefits of a comprehensive civil service law which applies equally to them as to Americans. A public school system has been created and is being steadily extended with satisfactory results. When it is considered that so much has been accomplished among a people alien to us in traditions, customs, and languages, I think I may fairly say, in the first place, that we have not wrought wholly in vain; and in the next and most important place, that it furnishes striking evidence of the adaptability and capacity of the Filipinos and warrants us in entertaining high hopes for their future.

But it is not my purpose to deal further upon this subject nor to produce the impression, by what has already been said, that the conditions which obtain in these islands today are ideal in character. Real work, both for the American

and the Filipino, lies in the future. Up to this time we have been going through what may be aptly termed a period of political reconstruction. While there has not even as yet been a perfect adjustment on the part of the people to the new order of things, as I have already shown we have made substantial progress in the right direction. From this time forward our labors must mainly be toward the consolidation, elaboration, and making permanent that which we have established and the building up and developing the natural resources of the islands.

Our first and most obvious need is an improved method of intercommunication among the people. We especially must labor to begin an era of railroad building for Luzon, Mindanao, and several of the large islands of the archipelago. I do not underestimate the value of schools and other agencies of modern civilization which lead the masses of the people to higher levels of living and thinking, but to my mind, so far as concerns these people, nothing is of so much moment to them as railroads. While without them much may be done, yet any progress must be slow, halting, and unequal. With them we may not only hope for but confidently expect rapid and tremendous improvement. As matters stand, except along that part of the coast line of the islands accessible to vessels, there is practically no incentive offered to labor or production. Having no markets, the inhabitants only seek to produce enough to meet their simplest wants. Agriculture under such circumstances is primitive in character and exceedingly limited in extent. The mineral resources of the islands remain undeveloped and vast forests of valuable timber almost unexplored and wholly untouched exist. It is only within a comparatively recent period that we have been in a position to grant franchises for the construction of railroads and other works of internal improvement.

The importance of developing agriculture can not be overestimated. The introduction of American agricultural machinery and methods of cultivation is very desirable and will be of immense benefit. The sugar and tobacco interests, I regret to say, are in a depressed and languishing condition. We can not hope for any real advance in these industries



until they are given entrance to the markets of the United States upon equitable terms, and for this boon we can only appeal to congress. Even were this granted, not till several years have elapsed from their entrance to the markets of the United States upon equitable terms can the sugar and tobacco planters of these islands hope to produce as much as prior to the insurrection; nor so long as the introduction of Chinese and other contract labor is prohibited as at present, and as doubtless it will be permanently, is there the slightest danger of Philippine exportation of these articles injuriously affecting prices to producers in the United States.

Among the last important official acts of Governor Taft was the conclusion of preliminary contracts for the purchase of what is known as the "friar lands." Final conveyance having been given and these lands having been taken over by the government, they are offered for sale at cost price upon long time to the persons who have heretofore occupied them as tenants. Payments will be made in annual installments at a very low rate of interest, thereby enabling the purchasers to become the owners of their holdings by paying a little more than that formerly paid as rent. In this way we hope and expect to settle for all time one of the burning questions in the Filipino mind. In making this settlement the government has been just, not to say liberal, to the religious orders, and at the same time confers substantial benefit upon the occupants of the land. It is believed that the spirit which dictated this transaction will be fully appreciated, not only by those immediately affected, but will be accepted by the great mass of the Filipinos as a further evidence of the kind feeling and beneficent purpose of the American government.

The commission perceived in the very beginning that one of the great drawbacks to anything like the permanent prosperity and progress of the islands was the lack of a stable currency. The only circulating medium which the Americans found here was an irredeemable silver currency composed of Mexican and Spanish-Filipino coin. The general tendency of silver has been for many years downward, but with frequent and violent fluctuations in price. The currency in circulation



as a result, rose or fell with the advance or decline of silver. All transactions, and especially those involving credits, were consequently largely speculative; this has been disastrous to all business enterprise. The commission in its first report to the president urged legislation by congress which would give to the people a silver currency to which they had always been accustomed but redeemable in gold, thus establishing and fixing a uniform stable standard of values. The congress of the United States, on the 2d day of March, 1903, passed an act the provisions of which substantially embodied the recommendations of the commission, and provided for a new coinage of Philippine pesos redeemable at the insular treasury in gold, which, together with the United States gold coin, are declared to be the sole legal tender of the islands after a date fixed by the commission. Pursuant to this act, the insular government, by proper legislation and executive order, demonetized Mexican dollars and provided for the redemption and re-coinage of the Spanish-Filipino currency. It, however, met with considerable difficulty in immediately retiring the outstanding Mexican and Spanish-Filipino coins, because the great mass of the people failed to understand and appreciate the real value of the new currency and continued to receive and use in their daily transactions the old upon a parity with the new coins. The difficulty of substituting the new currency for the old has furthermore been increased by reason of the fact that certain business interests have found it to their advantage to buy the hemp, copra, and tobacco produced in the islands in the old coins, which are much cheaper than the new, and thereafter to sell their purchases in foreign markets for gold. The commission, however, was thoroughly convinced that there could be no real and genuine business prosperity and progress so long as this state of affairs continued, and has therefore enacted legislation which will tend to make unprofitable the use of the old currency and thereby make easy and certain the introduction of the new and stable currency.

The importance of making effective the wise legislation of congress above referred to can not be overstated. In my judgment we can not hope for any large revival of business

and improvement in general conditions until we have eliminated this disturbing factor from the business of the islands. It will be the policy of the commission to bring about this result as rapidly as may be upon the lines which it has already laid down.

Did time permit I might enumerate other matters of considerable though minor importance which call for future consideration. Enough, however, has been said to indicate the general lines of policy which it is believed will be pursued by the government in the immediate future. I can not refrain, however, from saying that the success or failure of the efforts of the representatives of the American government in these islands must very largely depend upon the attitude of the Filipino people themselves; and, furthermore, that their attitude will in the nature of things in turn be largely affected by the attitude of the Americans in these islands toward the Filipino people.

It has been perhaps not extraordinary, in view of past events, that Americans and Filipinos should, to some extent, still stand apart from each other. It seems to me, however, that the time has passed, if it ever existed, for an attitude of reserve and distrust. The Americans who are in these islands with the legitimate and laudable purpose of aiding in their development and at the same time bettering their own fortunes can not fail to see that they can only hope to accomplish their desires by establishing cordial personal and business relations with the people with whom they must necessarily come in contact. This is so obviously true that it does not require elaboration. Aside from this, every consideration of magnanimity and patriotism impels them to such a course. We are strong; the Filipinos are weak. We are justly proud of our institutions and of the benefits and blessings which spring from them. We have assumed control and government of these islands without consulting the wishes of their inhabitants. Are we not then in conscience and honor bound to offer them the best we have to give? In inviting them to participate equally in our common birthright, we do not make ourselves the poorer, but therein the richer. We can not ignore the truth that in our relations with this people the

Americans of the island are quite as much on trial before the civilized world as are the Filipinos.

On the other side, every Filipino should turn a deaf ear to the sinister promptings of restless and selfish agitators and demagogues who strive to keep alive prejudices born of the evil passions engendered by war and, following the example of the wisest and most patriotic of their countrymen, should frankly and loyally accept the situation as it is. Nothing can be accomplished that is good by a contrary course. The logic of events is inexorable. True patriotism, under existing conditions, is found in a loyal attitude to the government. Every intelligent Filipino must realize that his people in their present stage of development are unable to stand alone and that in the very nature of things they must lean upon some stronger arm. It is suicidal, therefore, to repel the kindly advances made by those in authority or to engage in a policy of obstruction or agitation. There is no reason for antagonism. On the contrary, there is every reason against it. The coming of Americans to these islands to build railroads and other works of public utility, to engage in agriculture, manufacturing, or the mechanical arts can only be of advantage to the Filipino people. There is room in these beautiful and fertile islands for all. The door of equal opportunity should be thrown wide open for all alike—European, American, and Filipino.

## WHAT THE UNITED STATES HAS DONE FOR PORTO RICO.

BY EDWIN MAXEY.

[Edwin Moxey, authority on international law; born Oct. 26, 1869, Royal, Pa.; educated at Keystone academy, Bucknell university, and Chicago law school; lecturer Illinois college of law, 1897-9; dean Aurora law school, 1898-1900; dean law department Southern university, 1900-1; lecturer on colonial law and government, Columbian university, 1902-3; author of *Some Questions of Larger Politics* and many monographs on political and legal topics in magazines and legal periodicals.]

In 1898 the United States took possession of the island of Porto Rico. A careful study of what has been accomplished since then is fitting because of its bearing upon the question of our ability and fitness to assist a tropical people in their political, educational, and economic development. A study of this sort will necessarily involve some comparisons between the present and past conditions in the island; for, while the cession of the island by Spain furnishes a legal justification for our sovereignty, the justification in the larger sense must be found, if at all, in the results of our political co-operation with the Porto Ricans. In other words, the change in the sovereignty, here as elsewhere, finds its justification in achievements, not in parchments.

It is not vain boasting, but rather the plain and sober statement of a fact, to say that the change has resulted in the regeneration of the body politic of Porto Rico. From something little more than a political nonentity, the Porto Ricans have become practically a self-governing people. They have not been slow to discover the advantages of a system under which the revenues of the island go to meet the needs of the island, as compared with a system under which the needs of a distant and tottering throne, combined with the avarice of an office holding class, constituted a first mortgage upon all forms of insular taxes. They are gradually learning a great political lesson, that it is the duty of the minority to co-operate in the work of government, even though it cannot have its own way in everything.



It is safe to say they have learned more political science during the few years of American guidance than in as many centuries of Spanish domination. They have, with greater rapidity than even the most sanguine could have expected, been led by precept and example to see and to feel that political office brings no abiding honor, if worn as a mere ornament or means of selfish gain; but ennobles its holder only when used as an opportunity for rendering the highest possible service. Equality before the law, which, but a short time since, was to them something unheard of, a little later a mere meaningless phrase, has become a vital organic principle.

When the sovereignty over the island passed from Spain, there were in Porto Rico 150 miles of railway (narrow gauge) and a trifle less than 180 miles of wagon road. Since the American occupation, the railways have been changed from lines dependent upon state subsidy, to self supporting lines, the tonnage has doubled, and the passenger traffic shows a healthy increase. A belt line around the island has been provided for and will soon be constructed, as well as numberless lateral lines into the interior. An electric line across the island from San Juan to Ponce has been constructed. This line will carry freight as well as passengers. Thus the bull cart as a means of transportation is rapidly giving way to steam and electricity.

Wagon roads, which are indispensable to the development of the interior, have been constructed as rapidly as possible. Nearly as many miles of road have been built by the Americans during the few years of their occupation as by Spain during as many centuries. The telegraph system has been modernized, the old tape instruments—slow of operation and unreliable—in use at the time of American occupation, have been replaced by the latest type. The number of telegraph stations has been quadrupled, so that the commercial need of telegraphic communication is fairly well supplied. It is interesting to note that the telegraph line is owned and operated by the insular government, the results of which may become a very valuable object lesson to Americans.

The common advantages due to their changed political relations, and the infusion of new life attendant upon it, have produced a perceptible effect upon the volume of Porto Rican trade, which has increased more than 50 per cent. The effect of a wise, liberal trade policy with the island is seen not only in the increased volume of trade but in the increased share that the United States has in that trade. Porto Rican imports from the United States have increased from \$4,000,000 to \$12,000,000, that is to say, an increase of 200 per cent, while exports to the United States have increased correspondingly. During the same period, trade with European countries has decreased about 50 per cent. Along with this growth in the foreign trade there has been an equally healthy growth in the internal trade.

As a result of a more equitable system of taxation, the advantages of a free entry into the American market and contact with American life, the industries of Porto Rico have grown surprisingly. The production of sugar, which is the main agricultural product of the island, has increased 90 per cent, and coffee, the groves for producing which were nearly destroyed during the hurricane of 1898, will soon reach a normal yield. The production of tobacco, which is the next most important crop, has increased in value 50 per cent. Along with an increase in the production of staples has gone an increase in the variety of industries, as well as increased economy in the processes of production.

It is safe to conclude that Porto Rico will soon become an important fruit raising country. By the introduction of modern methods of culture and the substitution of improved means of transportation, the fruit crop has been made to yield a profit as high as \$250 an acre. Stock raising also has assumed greater importance.

In no respect, however, has greater or more commendable progress been made than in the department of education. Under the old régime there existed in Porto Rico nothing worthy of the name of public school system, for there was lacking every element that goes to make up an efficient system of public education. With the change in political relations, there has come a revolution not only in the facilities

for acquiring an education, but in the attitude of the popular mind toward it. There has been established, under American supervision, and with the hearty co-operation of the Porto Ricans, a public school system, consisting of three distinct types of schools: (1) those of general education, including primary and graded schools in every municipality, a high school at San Juan and a normal school at Rio Piedros; (2) agricultural schools; (3) industrial and trade schools. Thus the practical as well as the cultural needs of the Porto Ricans have not been overlooked.

The change in the subject matter taught, and in the manner of teaching it, has led the people to appreciate the practical utility of an education. The attendance has more than doubled—in fact, the desire has, for the present, outrun the means of satisfying it, although school buildings are being erected as rapidly as practicable. Spain left to the island no legacy of school buildings, but on the other hand a large legacy of illiteracy (79 per cent of those over ten years old). The carrying on of a public school system without any public school buildings, however it may have appeared to catholic Spain, was not in accord with American ideas. Already \$4,000,000 have been expended upon school buildings and equipment, and there is imperative need of more buildings, in order to accommodate those waiting an opportunity to enroll. Rural school buildings are paid for out of the insular treasury, but the municipality in which it is located is required to pay half the cost of a graded school building. Many of these are the finest buildings in their respective municipalities and are a source of genuine and pardonable pride to the people.

For the support of the school the municipalities are required to pay to the school board at least 15 per cent of all municipal taxes.

The insular government is supporting twenty native Porto Rican youths in industrial and manual training schools in the United States, at an expense of \$250 a year each, to prepare them for careers as artisans; and twenty-five others are being prepared for college, at an expense of \$400 a year each. The readiness of the Porto Ricans to spend \$15,000

a year in this way is evident not only of the value that they attach to education, but also of their confidence in American institutions.

Charity work has not been neglected by the government. An asylum for the insane and a home for the blind have been established; also a charity school for girls, in which they are taught to do household work, as well as being given instruction in the "three R's" and an opportunity to learn English. In this school nearly 300 girls are cared for and educated. There also exists the "Battalion Boys' Charity School," in which the boys are given a military training, as a means of discipline, are taught to speak English, given an elementary education, and required to learn a trade. In this school there are 275 boys, between the ages of 12 and 18. It is believed that both these schools will soon become practically self supporting.



# WHAT THE UNITED STATES HAS DONE FOR CUBA.

BY COL. CLARENCE R. EDWARDS, U. S. A.

[Clarence Ransom Edwards, chief of bureau of insular affairs and colonel in United States' army; born Jan. 1, 1860, at Cleveland, Ohio; graduated from West Point, 1883; commissioned second lieutenant twenty-third infantry, 1883; professor military science and tactics, St. John's college, Fordham, N. Y., 1890; adjutant-general on General Lawton's staff, 1899, and took part in General Lawton's campaigns at Santa Cruz and San Isidro and his expeditions to the Philippines, and because of his gallant conduct was recommended for brevets of major-lieutenant colonel and colonel, U. S. A., and brigadier-general, United States volunteers. On General Lawton's death he accompanied the remains to Washington, and in July, 1902, was made colonel, U. S. A., and chief of the bureau of insular affairs.]

One of the most interesting pages in history is that which records the peaceful withdrawal of the flag and forces of the United States from Cuba, and the inauguration of the government of the republic of Cuba.

After the Spanish evacuation of Cuba there were no strictly military operations. The officers of the United States army in Cuba were largely occupied in conducting, under the direction of the military governor and the department commanders, a general civil administration for which no other governmental machinery existed and in aiding the existing municipal governments in the performance of their duties. The first and imperative duties of the army under the condition of social disorganization which existed in the island were the maintenance of order, the immediate relief of prevailing distress among the starving reconcentrados, the sanitation of the towns, which had been left in a filthy condition and in which none of the precautions against disease known to modern sanitary science had ever been adopted, and the promotion of a return to peaceful industry on the part of the people whose homes and farms had been by force abandoned and laid waste.

The use of troops to maintain order was necessary for but a short period. Forces of civil police, organized from the

people of the island, were substituted and performed their duties efficiently. The part played by the United States military forces in the maintenance of order was confined to the restraining influence of their presence. The total issuances of rations to destitute persons in Cuba through the agency of the officers of the army amounted to 5,493,000 rations at a cost of \$1,417,554.07.

The condition of the soldiers of the Cuban army, who had long been separated from any productive industry and who upon the conclusion of hostilities were left substantially without homes or occupation and with no pay coming to them from any source, seemed to require that, in the interest of public order as well as of humanity, some relief should be afforded which would enable them to disband and return to peaceful employment. It was accordingly determined to apply so much as might be necessary of the three million emergency fund provided by the act of January 5, 1899, for that purpose. Arrangements were made under which the sum of \$75 was paid to each Cuban soldier borne upon the duly authenticated rolls on his bringing in and depositing his arms. Two million five hundred and forty-seven thousand seven hundred and fifty dollars were paid out in this way, and upon the payment being completed the Cuban army separated and ceased to exist.

The sanitary condition of the cities and towns throughout the island were found to be as bad as it is possible to conceive. Thorough and systematic inspections were made, sanitary corps were organized, streets were cleaned, sewers were opened, cesspools and sinks were emptied, public and private buildings were disinfected, methods of disposing of refuse were adopted, water supplies were improved, and rules were established and enforced to prevent a recurrence of similar conditions. In the larger cities a thoroughly good sanitary condition required the establishment of grades, the construction of adequate sewer systems, and increase of water supplies. The work was entered upon immediately after the American occupation was established and prosecuted with the utmost vigor. The city of Havana was subjected to a house to house renovation and disinfection at the rate of from

120 to 125 houses per day, with the gratifying result that the number of deaths from yellow fever in the city of Havana in 1899 was 63, while the average death rate for the ten years prior to American occupation was 481.

The deaths from all causes in Havana during the first few months of our occupation were numerous, owing to the great number of sick and dying who were there at the time of the Spanish evacuation; but the rate steadily decreased under American occupation until in October, 1899, it was 26.6 per thousand.

Similar conditions existed at Santiago and were treated in a similar manner and with great thoroughness and effectiveness, and an outbreak of yellow fever was speedily controlled and overcome.

During the first six months of American occupation there was expended from the island revenues \$1,712,014.20 for sanitation.

One of the causes impelling the United States to intervene in the affairs of Cuba was the fact that the unsanitary conditions in the island were a constant menace to the health and commerce of the southern states of the union. The dread scourge of yellow fever had frequently been communicated to our shores from Havana and other seaports of Cuba. During the continuance of American occupation of Cuba a systematic, scientific endeavor was made to eliminate this source of peril to both Cuba and the United States, and the results of the endeavor are most gratifying. The island of Cuba is apparently and entirely free from yellow fever, and this dread disease has passed from one of the leading causes of death to one of the least frequent, and Havana has changed its position from one of the most unhealthy cities to one of the most healthy. The control of yellow fever, owing to investigations as to its causes prosecuted under the direction of the military government, appears to be now practically absolute.

Both Cuba and the United States have been free practically from yellow fever since the completion of the work of sanitation performed under American occupation. The Platt amendment requires the Cuban republic to continue and

maintain these sanitary measures, and if the results shall be that yellow fever is eliminated or subjected to such control as to prevent it becoming the scourge it was in former years, it is impossible to fix the value or overestimate the beneficence of such accomplishment.

During American occupation of Cuba especial attention was given to the establishment of common schools and other educational institutions. The enrollment of the public schools of Cuba immediately before the last war shows 36,306 scholars, but an examination of the reports containing these figures indicates that probably less than half the names enrolled represented actual attendance. There were practically no separate school buildings, but the scholars were collected in the residences of the teachers. There were few books and practically no maps, blackboards, desks, or other school apparatus.

The instruction consisted solely in learning by rote, the catechism being the principal text book, and the girls occupying their time chiefly in embroidery. The teachers were allowed to eke out their unpaid salaries by accepting fees from pupils, and since less than one-tenth of the children of school age could be accommodated, the result of the fee system was that the children of the poor were either excluded or neglected. Even these poor apologies for public schools were, to a great extent, broken up by the war, and in December, 1899, the entire public school enrollment of the island numbered 21,435. At the end of the first six months of American occupation the public school enrollment of the island numbered 143,120. The schools were subjected to a constant and effective inspection and the attendance was practically identical with the enrollment.

The schools were separated from the residences of the teachers, and each schoolroom had its separate teacher. The courses and methods of instruction were those most approved in this country. The text books were translations into Spanish of American text books.

All over the island the old Spanish barracks and the barracks occupied by the American troops which had been withdrawn were turned into schoolrooms after thorough



renovation. The pressure for education was earnest and universal. The appropriations from the insular treasury for that purpose during the first year of American occupation amounted to four and a half millions.

At the close of American occupation there were 121 boards of education elected by the people (the system was kept out of politics); the work of changing the old barracks throughout the island into schoolhouses had been completed; a thoroughly modern school building costing \$50,000 had been erected at Santiago; one school building in Havana had 33 rooms, with a modern kindergarten, manual training branch, two gymnasiums, and baths; large schools had been established by changes in government buildings at Guineas, Pinar del Rio, Matanzas, Ciego de Avila, and Colon; over 3,600 teachers were subjected to examination, and approximately 6,000 persons applied for and received examination as teachers. For six weeks during the summer vacation of 1901 4,000 teachers were collected in teachers' institutes.

Generally, the schools were well supplied with modern books and the most modern furniture. The government of occupation upon a single order purchased 100,000 full sets of desks, text books, scholars' supplies, etc.

At the time Spanish sovereignty was withdrawn from Cuba the prisons in the island were full to overflowing with wretched creatures living in indescribable filth and squalor. An inspection of the women's prison in Havana disclosed the fact that the women had no other place to sleep than on the floor, and were unable to appear in a body because they were without clothes to cover their nakedness, and they came before the inspector one by one, passing their garments from one to another.

The cruelty of these conditions is made more impressive by the fact that many of the unfortunate inmates had never been tried or convicted of any offence. As the simplest way of dealing with the evil, a board of pardons was constituted in January, 1900, which visited all the prisons and examined the inmates. They found many who had been there for a long period waiting trial, and in one instance this period had extended for eleven years. So far as the offences with which

they were charged could be ascertained, a large part of these people had been punished far more severely, whether they were innocent or guilty, than they could have been upon conviction.

On recommendation of this board, 520 prisoners belonging to the class last described were released from confinement. The prisons were cleaned and renovated, a rigid system of inspection followed, and so far as practicable youths were separated from the adults, and those merely charged with crime from those under conviction.

The intolerable delays of criminal procedure, which thus punished the innocent equally with the guilty, and punishing both without any opportunity for trial, were obviated by the establishment of correctional courts throughout the island, in which petty offences were summarily dealt with and disposed of and the innocent afforded an opportunity to be promptly relieved from prosecution.

As a further safeguard against the recurrence of the evils described an order was made providing for the writ of habeas corpus.

As a result of these changes of procedure it shortly resulted that many prisons in the island were wholly without inmates.

The revival of industry in Cuba was necessarily slow, but upon the establishment of American occupation many of the people who had been driven into the towns during the reconcentration period returned to the country and recommenced the cultivation of the land. In many parts of the island there was a demand for farm labor, owing to the large increase in the amount of tobacco planted. The principal agricultural product of Cuba is sugar, and the restoration of the sugar industry was severely hindered by the fact that the sugar plantations were heavily mortgaged, their machinery had been destroyed and the owners found it difficult to secure additional capital to restore the plant, because of the uncertainty which capitalists felt regarding the character of the future government of the island and the protection which it would afford to investments. Not only were the owners of the large estates affected by these circumstances, but many of the Cuban people who were ready and anxious to resume

the cultivation of their farms with their own hands were unable to do so, because they had not the means to purchase the necessary animals and the necessary implements for that purpose. To relieve this situation, the government of intervention expended \$104,500 for the purchase of such animals and sold them to Cubans engaged in agricultural pursuits.

The uncertainty which retarded the industrial development of Cuba and prevented the influx of capital resulted not only from doubt as to the character of the future government and safety of investments, but also the uncertainty as to the future market for the sugar product of the island. The competition of the bounty fed beet sugar product of Europe had reduced the price which could be realized from cane sugar to a point so near the cost of production that the cane producer could not pay expenses by the old method of production theretofore prevailing in the island. Only new and improved methods of production on a large scale and in the most economical manner and requiring large capital made a successful competition by the Cubans possible. The sugar producer of Cuba found himself confronted by two additional dangers—first, that the sugar of Porto Rico, like that of Hawaii, was admitted into the great market of the United States free of duty, while the Cuban sugar was required to pay a duty; and the other, the prospect of ratification by the senate of the reciprocity treaties already negotiated, under which the sugar of the British West India islands would be admitted to the United States at a 20 per cent reduction of duties, while the Cuban sugar would continue to pay full duty.

Under these conditions, as the United States is the great market for Cuban sugar, it was manifest that, however competent and efficient might be the permanent government of Cuba, the maintenance of the sugar industry in the island would depend upon the ability of that government to make arrangements with the United States for a reduction of the tariff.

Pursuant to the recommendation of the president, congress on December 16, 1903, passed an act to carry into effect a convention between the United States and the republic of Cuba signed on the 11th day of December, 1902, whereby



provision was made that products of Cuba coming into the United States should receive the benefit of reductions in the tariff ranging from 20 per cent to 40 per cent of the regular duties on such products.

The issue of rations to needy persons, which characterized the first year of American occupation, was succeeded by an extensive re-establishment, renovation and re-organization of the charitable institutions of the island. These were left at the close of the war without funds or supplies. Such of them as were not closed were dilapidated and insanitary. The hospitals were practically without apparatus, medicines, or physicians.

A comprehensive law governing the department of charities was adopted on the 7th of July, 1900, whereupon the government of the island extended financial aid to 38 hospitals, 4 asylums for the aged, 12 orphan asylums, 2 dispensaries for the poor, 1 insane asylum, 3 leper hospitals, 2 reform schools, 1 training school for boys, 1 training school for girls, and 1 emergency hospital in Santiago.

In connection with the work of the orphan asylums a strong effort was made to secure the placing of children in private families throughout the island, and the effort met with great success.

As prosperity increased, many parents who had been unable to support their children and had left them in these institutions reclaimed them, and large numbers of other children were placed in private families under proper pledges for their care and education, secured by careful investigation beforehand and afterwards by systematic personal inspection. For the children remaining a thorough system of industrial education was adopted and carried out.

The hospitals were supplied with medicines and surgical apparatus, and medical attendants and trained nurses were brought from the United States to act as instructors of trained nurses in Cuba. These instructors were distributed in the hospitals throughout the island, and gave instruction to classes with gratifying results.

The condition of the insane was particularly distressing. They were confined in cells in jails all over the island and



treated literally like wild beasts. A large insane asylum in Havana was put in order and these unfortunates were collected and taken thereto, where they were cared for. At the close of American occupation there were supported by the Cuban government 34 hospitals, containing 2,844 beds; 6 training schools for female nurses under the tuition of American trained nurses, with Cuban women as pupils, with regular courses, examinations, and degrees. The government training schools for boys and girls had been enlarged. The bureau for placing indigent children was thoroughly established and during the year 1901 returned over 1,200 children to their relatives, and 437 in other families. There were 2,010 orphans under the care and supervision of the state. The lepers of the island had been gathered into two institutions, and the total number under treatment was 134.

The people of Cuba had long realized their lack of railway transportation facilities. The situation as it existed at the time of the American occupation is described in *Industrial Cuba* as follows:

"The railway system of Cuba, consisting of seven companies, the aggregate length of whose lines is only 1,467 kilometers, or 917 miles, is entirely inadequate in bringing the extreme ends of the island together, Santiago and Havana in point of time being as far apart as San Francisco and New York, though only separated by a distance of a few hundred miles. The facts gathered on this subject point to the advisability of immediately constructing a trunk railway from end to end of the island, with branches extending north and south to the important cities and ports. From whatever standpoint it may be viewed, no one enterprise could do so much to improve the situation on the island. No revolution could have existed in Cuba if such a railroad had been completed by the former government, and nothing will so rapidly tend to the revival of commercial and general business as the facility for quick passage from one end of the island to the other and from the trunk line over branches to the seaboard cities. All political turbulence will be quieted thereby and prevented in the future. The entire country will be opened to commerce, lands now of practically no value and unproductive will be

worked, the seaport towns will become active, and commerce between the island and the United States will soon be restored to the former figures of approximately \$100,000,000 per annum. Business enterprise, ever alert to conditions such as herein described, had already surveyed the route, and there are several projects on foot looking toward prompt action in this direction. After a careful study of the situation it would seem extremely doubtful if such an enterprise could be made a commercial success for many years to come without material assistance from those responsible for the industrial future of Cuba."

The cities and towns of the island were insistent in their appeals to the government of intervention to make provision for railway construction. The demand was complied with by the adoption of a railway law embodying the salient features of railway laws of the states of the union, with many additional provisions safeguarding the rights and interests of the public and of the Cuban government. Under this law a railroad connecting up the very short lines was constructed, and is in operation between Havana and Santiago.

## PROTECTION IN THE UNITED STATES.

BY A. MAURICE LOW.

[A. Maurice Low, Washington correspondent, Boston Globe and London Chronicle; born in 1860, in London, England; received his education at King's college, London, and in Austria; correspondent for leading American and European newspapers and magazines, particularly on political and international matters; author in 1901 of *The Supreme Surrender*.]

The tariff history of the United States is a peculiar one. When the young nation began its existence, with thirteen states, an area of 827,000 square miles, and a population of 4,000,000, it experienced several years of free trade in its most absolute sense. Even this short experience, with this comparatively small area and population, convinced the thoughtful men of the young republic that it needed protection to develop its manufacturing industries, and thus create a home market for its agricultural products; and the first tariff act declared itself, and those who framed and passed it, in favor of that principle. As the nation grew the protectionist sentiment developed greater strength. In 1803, the great Louisiana purchase doubled the area of the country; the following year saw the tariff increased, and every year the country was brought step by step to what it believed to be a definitely protective state. In 1819 Florida was added, and soon a still higher thoroughly protective tariff was passed, bringing with it great prosperity. In 1845, 1846, and 1848 came the great additions of Texas, Oregon, and the Mexican cession, and after a dozen years of experiment with low tariffs following these increases in territory, a territory with all varieties of climate and power of production, the people again decided in favor of protection, and have maintained it as a fixed principle of governmental policy from that time to this, with a single exception of less than four years.

Thus, as the country grew and added new areas with new varieties of climate and production, the protectionist sentiment grew. The area occupied by the bulk of the people who fought the revolutionary war was not exclusively an

agricultural area, but was much of it better adapted to manufacturing. When at the close of that war the tide of emigration poured over the Alleghanies into the great agricultural area of the west, the importance of being able to manufacture for such a prosperous population, and of supplying to that agricultural population a home market for its products, impressed itself upon the minds of the statesmen of the nation. When the other great agricultural area, the Louisiana purchase, was added, and the producing power of agriculture and mining greatly increased, the importance of the manufacturing interest became more and more apparent. When Texas, Oregon, and California were added, the country was in control of a party whose leaders believed in a low tariff, and they maintained that tariff until the people grew tired of the business conditions which accompanied it, and removed them from power so effectually that a quarter of a century passed before they were again entrusted with office, even for a single presidential term. The area of the United States, an area practically equal to that of all Europe, gives it such a variety of climate, soil and production, agricultural, mineral and forest wealth, that each added section, with its new climate and power of production, offered a new reason for protection as a means to develop manufacturing and enlarge the great home market. The development and retention of the home market has always been regarded as of equal importance with the development of a great manufacturing industry in the minds of the supporters of the protective tariff policy.

The first tariff experience of the United States was during that period after the close of the revolution in which the new union existed as a mere confederation. It had no president or other executive officers, and congress had no power to enact and enforce tariffs for the whole country. It could recommend to the states what they should do, but each state was at liberty to determine for itself whether it should adopt or reject the measure or general plan recommended by congress. Some of the states indicated a willingness that congress should enact a general tariff law, but others refused to give their consent. Congress, on the other hand, urged upon the states a uniform rate of duty, but without success. The



result was that each state framed a tariff to suit itself, making the rates of duty apply not only to merchandise from foreign countries, but also to that from the other states of the confederation. The result was, first, the destruction of the principle of developing a great internal exchange among the states, and of thus building up a great home market; and, second, the admission by smuggling of goods from abroad without payment of duties.

Even where tariffs were imposed they were in most instances so low as to prove no barrier to merchandise from abroad. The tariff rate named by the great state of Pennsylvania, now the most persistent supporter of a high protective tariff, was but  $2\frac{1}{2}$  per cent, which, of course, was not in the slightest degree protective; but even this was nullified by the fact that New Jersey established a free port just across the river from Philadelphia, into which goods were imported without payment of duties and quietly smuggled into Philadelphia. The same thing was done at the northern end of New Jersey, a free port being established opposite New York, from which goods were smuggled into that city. As a result a large part of the merchandise coming into the United States during the period of the confederation, from 1783 to 1789, was admitted free of any duty, and that which paid duty was so lightly taxed that the impost had no effect upon the volume of importations. Consequently, it may be said that the United States during the period of the confederation, from 1783 to 1789, had a nearer approach to free trade than has been known to the following generations. The effect is told by that well known and generally accepted historian Hildreth, who says (Vol. III., p. 446):

“The large importation of foreign goods subject to little or no duty and sold at low prices was proving ruinous to all those domestic manufactures and mechanical employments which the non-consumption agreements and the war had created and fostered. The country had been flooded with goods, and debts had been unwarily contracted for which there were no means to pay. The importations from Great Britain in 1784 and 1785 had amounted to 30 millions of dollars, while the exports thither had not exceeded 9 millions.

. . . The community was fast becoming divided into two embittered factions of creditors and debtors. . . . The excessive importation of foreign goods had drained the country of its specie, and the circulating medium consisted principally of treasury orders on the state tax collectors and depreciated certificates of state and federal debt."

The result of this experiment with free trade was a growing feeling in favor of giving congress power to create and enforce a tariff, and the conditions above described were among the principal causes which led to the adoption of the constitution which not only required congress to establish and enforce tariff laws, but at the same time abolish all tariff lines between the states.

Those two articles of the constitution have contributed in no small measure to the industrial success and prosperity of the United States, a success which, it will be admitted, is phenomenal. The constitution gives to congress the power to create and enforce such tariff as the conditions of the country require, and it requires that "all duties, imports, and excises shall be uniform throughout the United States." In other words, it prohibits any tariff between the states and permits the products and manufactures of one section to pass freely and uninterruptedly to any other section of the country. This gives an opportunity to build up as high a tariff wall around the outside of the country as may be desired and yet permits an absolutely free interchange among the people of the entire union. This in a country of the area of the United States, with its diversified climates and soils and its varied productive capacity, has preserved the home market, equal in value to the entire international commerce of the world.

The first work of congress under the new constitution was to pass a tariff measure which declared in its preamble that "it is necessary for the support of the government, for the discharge of the debt of the United States, and for the encouragement and protection of manufactures, that duties be laid on imported goods." It does not follow, however, that this declaration, coupled with the intention of the framers of the act, did in effect make it a sufficiently protective measure to accomplish the desire for the development of manu-

facturing. The framers of the act had little experience in economic legislation, and the rates of duty levied were extremely low, as compared with what is now considered protection by any of the countries which adopt that system for the maintenance of home industries and home markets. It soon became apparent that the rates of the first tariff, although intended to be protective in their operation, were too low, the actual workings of the law showing that the average rates on all importations were only about  $7\frac{1}{2}$  per cent. The next year another bill was passed slightly increasing the duties, and in the following years there were more advances, until about 1800 the average rates were about 13 per cent ad valorem on all imports. In 1808 a much more protective tariff was enacted, which placed a duty upon 175 articles and admitted 30 articles free of duty, the average rate of duty on all imports being about  $28\frac{1}{2}$  per cent. About the same time was passed the famous embargo act, prohibiting all imports from England and France, and while it was not intended as a protective measure its effect during the one and a half years of its existence was, of course, to stimulate greatly home production.

The effect of these protective duties, even at rates which at the present time would be considered low, was strongly marked. Manufacturing developed so rapidly that the census of 1810 showed the value of manufactures in the United States to be over \$125,000,000, a very large sum in the stage of manufacturing which had been reached, and especially so for a young nation of 7,000,000, in a new country, hampered for capital, with crude and insufficient machinery, and the production of raw materials but little developed. The manufacturing industry had its effect upon agriculture, which was prosperous. Commenting upon the conditions of this period, Adam Seybert, a distinguished member of the house of representatives, from Pennsylvania, in his well known and often quoted work, "Statistical Annals of the United States," published in 1818 and probably written in 1816 and 1817, says:

"The population of the United States in the twenty years from 1790 to 1810 acquired an augmentation of 84 per cent. When an increase so great is accompanied with



the happiness of the people, when a moderate share of industry will secure to every individual the comforts and many of the superfluities and banish mendicity, there can no doubt remain of the prosperity of the community. It has been acknowledged in Beaujour's 'Sketch of the United States' (1814) that 'the poorest individual in the United States, even the simple laborer, is there better fed and clothed than in any other country.' The many large cities, towns, and villages that have been established are monuments of the industry of the people.

"Our agriculture has not only furnished an abundance for the inhabitants of the United States, but has in addition contributed an enormous surplus for other nations. In 1791 the exports were valued in the aggregate at \$19,000,000; in 1817 the exports of domestic merchandise had swelled to the enormous amount of \$61,000,000.

"It is not long since the manufacturers of the United States have gained the public attention; now they are respectable from their number, as well as from the number of persons to whom they have given employment, and in the capital which has been invested. Abroad these establishments have excited the fears of competitors, much anxiety has been exhibited on account of their progress, and the success with which our artists have executed many of the most difficult processes. These workshops have been extensively diffused in our own country, they are numerous on the seaboard, and there are many of them west of the mountains."

A part of the prosperity which Seybert describes was doubtless due to the causes existing between 1812 and 1816. During the war of 1812, the tariff rates were doubled, giving an average rate of about 33 per cent, and this coupled with the small importations during that period and the great demand, of course, stimulated home production and general activity.

But a cloud, only a speck on the horizon when Seybert wrote, soon spread over the country. The prosperity of the manufacturers, which, he says, "has excited the fears of competitors abroad," soon led to a definite plan of attack by the manufacturers of England. The policy of flooding the



country with manufactures at low prices, was entered upon with a deliberate purpose, and although the tariffs adopted in 1816 and 1818 were doubtless intended to be protective, their rates ranging about 26 per cent on all imports, they were insufficient to prevent large imports, which averaged more than \$100,000,000 a year up to 1819. During that period there was great distress among the American manufacturers, and a consequent reduction in the demand for agricultural products, and this continued until 1824, when a thoroughly protective tariff act was passed.

While the average tariff rates during the period from 1816 to 1824 were higher than those prior to the war of 1812, they were not sufficient to keep out a flood of foreign merchandise, which came with such volume and persistence as to close many of the factories and throw thousands out of employment, so that Henry Clay declared that the values of property fell off one-half and there was general distress. Horace Greeley, the editor of the New York "Tribune," said of this period:

"At the close of the second war with England, peace found the country dotted with factories which had sprung up under the precarious shelter of embargo and war. Those not yet firmly established found themselves suddenly exposed to a relentless and determined foreign competition. Great Britain poured her fabrics far below cost upon our markets in a perfect deluge. Our manufactures went down like grass before the mower, and agriculture and the wages of labor speedily followed. Financial prostration was general and the presence of debt was universal. In New England, fully one-fourth of the property went through the sheriff's mill, and the prostration was scarcely less general then elsewhere."

Of this period, George B. Curtiss, an American writer on tariff questions, says, "Progress and Prosperity," p. 577 et seq.:

"Though a protective tariff law, intended as such, had been enacted, yet it was really a free trade statute, and brought about a free trade period. It matters not how high an import duty may be; if it is not sufficiently high to keep out foreign goods it is not protective. No duty is protective

if the foreign manufacturer is willing to pay this duty, sacrificing his own product, and selling his goods cheaper than he can make them, in order to destroy our industries and then step in and control the market. . . . A tariff, however high, is still a low tariff when it will not prevent the importation of manufactures that should be made at home. In 1816, young as were our industries and small as was our population, 70,000 persons were discharged and made idle or driven to the farms. The agriculturist, thereby, not only lost his market, but had to divide his profits, so that his products hardly paid for the marketing."

So it came about that a really protective tariff was enacted by congress in 1824. It advanced the rates of duty on a large number of articles, bringing the average ad valorem duties up to 37 per cent on all imports. This was followed by improved conditions and proved so satisfactory that a still further advance of duties was made in 1828, bringing the average rate on all imports up to about 45 per cent ad valorem. This tariff was characterized by Greeley as "the most protective tariff ever adopted," though this characterization was made prior to the adoption of the thoroughly protective tariffs of 1890 and 1897, under which the United States has experienced its greatest prosperity. That there was great prosperity under this high and thoroughly protective tariff of 1824 cannot be doubted. It is generally admitted by all. President Jackson, in his annual message in 1829, said:

"Our country presents the most cheering evidence of general welfare and progressive improvement. . . . The public prosperity is evinced in increased revenue from the sale of public lands, and in the steady maintenance of that produced from imposts and tonnage. There will have been paid on the public debt, during the present year, the sum of \$12,000,000. This state of the finances exhibits the resources of the nation in an aspect highly flattering to its industry and auspicious of the ability of the government, in a very short time, to extinguish its debt."

Lossing, the historian, says of the condition of this period that President Adams on his retirement from office "left to

his successor a legacy of unexampled national prosperity, a greatly reduced public debt, and a surplus of more than \$5,000,000 in the treasury."

Mr. McKinley, discussing the conditions of that time said, during his congressional life, prior to his election to the presidency:

"None of the awful prophecies which had been made by those opposed to the bill were fulfilled. None of the dire results ensued. The nation was not only not palsied, but quickened into new life. The merchants did not move out of their costly piles of stores and dwelling houses; they remained only to acquire larger and finer and more costly ones; the poorer classes were not driven to cold water as their only food and drink, but their labor was in greater demand and their wages advanced in price. The entire country under the tariff moved on to higher triumphs in the industrial progress, and to a higher and better destiny for the people."

Henry Clay, the distinguished advocate of protection, six times speaker of the house of representatives, member of the senate, secretary of state, and candidate of the whig party for the presidency, in a speech delivered in congress, said:

"On a general survey we behold cultivation extended, the arts flourishing, the face of the country improved, our people fully and profitably employed, the public confidence exhibiting tranquillity, contentment, and happiness, the public debt of two wars nearly redeemed, and, to crown all, the public treasury overflowing. If a term of seven years were to be selected of the greatest prosperity which this people has enjoyed since the establishment of their present constitution, it would be exactly that period of seven years which immediately followed the passage of the tariff of 1824."

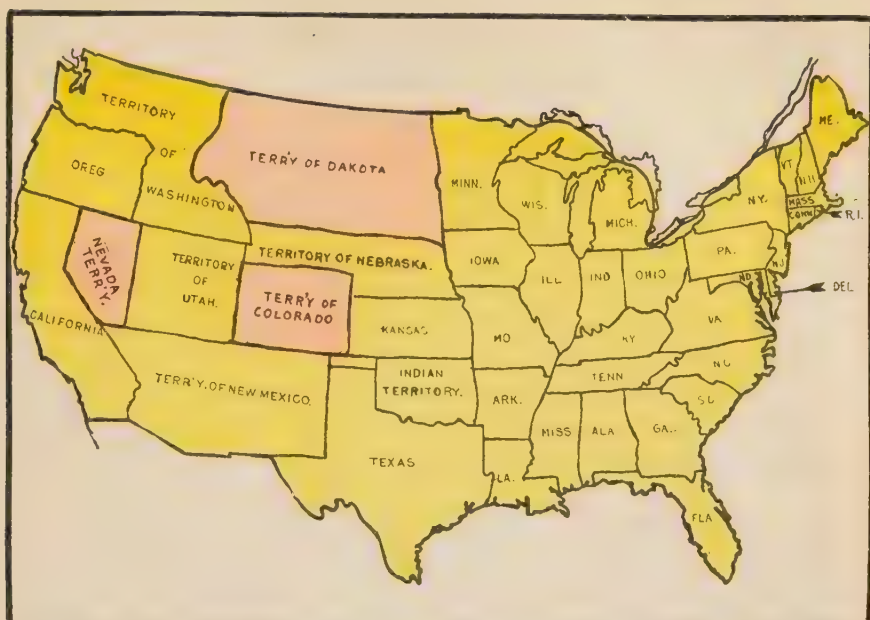
Curtiss, the historian, adds this testimony, "Protection and Prosperity," p. 586:

"The country made wonderful strides during the operation of the protective tariffs of 1824 and 1828. From the ruin and distress of 1820 we had again become a prosperous nation in 1830. The American system was developed and fostered. The home market was becoming year by year of

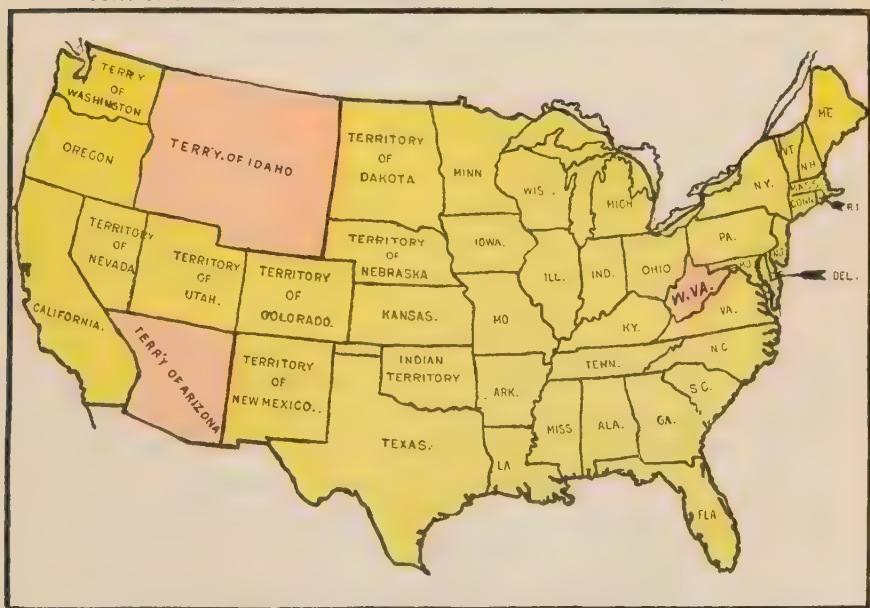








NO. 29.—1861. TERRITORY OF NEVADA FORMED FROM WESTERN PART OF UTAH. TERRITORY OF COLORADO FORMED FROM THE EASTERN PART OF UTAH, WESTERN PART OF NEBRASKA, AND NORTHERN PART OF NEW MEXICO. DAKOTA FORMED FROM NORTHERN PART OF TERRITORY OF NEBRASKA AND THAT PART OF THE TERRITORY OF MINNESOTA NOT INCLUDED IN THE STATE OF MINNESOTA.



NO. 30.—1863. IDAHO TERRITORY FORMED FROM THE EASTERN PART OF WASHINGTON TERRITORY AND WESTERN PART OF DAKOTA TERRITORY. ARIZONA TERRITORY FORMED FROM WESTERN PART OF NEW MEXICO. WEST VIRGINIA FORMED FROM WESTERN PART OF VIRGINIA.



greater proportions. Wages had advanced, and the American laborer was even then enjoying a content unknown elsewhere."

Thus, in little more than the first quarter of a century of national existence the relative merits of free trade and protection had been tested, and the advantages of protection had been demonstrated.

The people of the south, who were selling their cotton, and tobacco, and rice, agricultural products, to Europe, began to fear that if the United States maintained high tariffs against European manufactures, Europe would refuse to buy American agricultural products, and despite the generally prosperous condition of the country, in the south, an agitation began for a reduction of the tariff.

As the people of the south were not manufacturers, and had no manufactures to sell in the home market, their sole interest was to prevent conditions which they believed would be hurtful to their market for agricultural products. The existing law was characterized by the south as "the tariff of abominations," and its reduction was demanded, even on the threat that the south would refuse to pay the duties levied under it. While President Jackson, himself a democrat and a southern man, quickly silenced this threat, the violent opposition to the law had its effect, and in 1833 a new tariff law was passed, providing that all duties in excess of 20 per cent should be gradually lowered by removing 10 per cent of that excess each alternate year during ten years, and the remainder on the year following, the purpose being by easy stages to bring the tariff rates down to not more than 20 per cent *ad valorem*.

While a reduction of tariff at this slow rate, a rate which extended the reduction over a full decade, and at the end of that period still left a duty of 20 per cent, would not seem to be such a serious matter, it is a fact that the period of reduction was full of troubles, financial and commercial. And the friends of protection assert that it was largely due to the existing and prospective tariff conditions. This was not so much from the mere reduction of duties by the slow process described, but by reason of the destruction of the protective



features of the act. Thomas H. Benton, a member of the senate at the time the bill was passed, though himself a democrat and a southern man, denounced the measure in the most vigorous terms. In his work, "Thirty Years in the Senate," he says (Vol. I., pp. 346 and 347):

"The act of 1833 comprises every title necessary to stamp a vicious and reprehensible act, bad in the matter, foul in the manner, full of abuse, and carried through upon a plea which was an outrage upon representative government and upon the people of the states. . . . The overthrow of the old revenue system that duties were to be levied on luxuries and not on necessities, the substitution of universal ad valorem to the exclusion of all specific duties, the abolition of all discrimination upon articles in the determination of duties, the preposterous stipulation against protection while giving protection, all these were flagrant vices of the bill. . . . The year 1842, that fixed for the completion of the gradual reduction of duties, was to have been the jubilee of all these inventions and set them all off in their career of usefulness, but that year saw all these fine anticipations fail."

While it would not be just to attribute to the tariff of 1833 all of the disasters which came during the decade following its passage, doubtless a part of them was chargeable to it. The first reduction was little felt, but when the second and then the third came, there was a general reduction of revenue, a general reduction of business activity, a great crash financially such as the young country had never known before. While much of this was doubtless due to other causes—unsound banking and finance, rash speculation, and defective business methods—it is a fact that the people were glad to return to a protective tariff at the end of the period fixed for the gradual reduction, and in 1842 a protective tariff was passed, by which the rates of duty were placed as high as 50 per cent and in some cases even 75 per cent, the average rate of duty being about 35 per cent. Commenting upon this act and that which preceded it, Lossing says (p. 477):

"By the act of 1833 duties on foreign goods were to reach the minimum of reduction at the close of 1842, when the tariff would only provide revenue, not protection to manu-

facturers, like that of 1828. The latter object (protection) appeared desirable, and by an act passed in 1842 high tariffs were imposed on many foreign articles."

That the act of 1842 was thoroughly protective is generally admitted, and that a period of prosperity existed during most of its operation is also a fact.

"Its effect," says Curtiss "Protection and Prosperity," p. 593, "was instantaneous. First came confidence. Then the fires were lighted, the wheels began to revolve, and the industries and business of the country improved daily. Not only that, but the treasury gained relief at once. The customs receipts for the year ending June 30, 1843, were \$25,234,750, as against \$14,487,216 for the previous year under the compromise tariff. Under the free trade tariff, there had been a steady decrease of revenue. Under the protective tariff of 1842, there was a steady increase of revenue. And this, too, in the face of the most decided falling off in certain imports. The committee which framed the bill of 1842 showed that the balance of trade had been \$20,000,000 against us during seven years. 'All branches of industries are paralyzed,' said the report, 'but perhaps the most interesting point made was the difference between our tariff and the tariffs of foreign countries. On our products, valued at \$455,000,000 in Europe, duties were levied amounting to \$113,000,000, while on products which were imported, to the amount of \$73,000,000, our duties were only \$17,000,000.' "

Free trade, or, more properly speaking, low tariff, had been tried and found wanting. A reduction of the rates on imports had been attended with general distress; prosperity had immediately followed in the train of high duties. The protectionists pointed to conditions as vindicating their judgment. The south, which believed that its present and future welfare rested on low tariffs, found that its wealth did not increase proportionately with a reduction of duties, although it still clung to its belief in the wisdom of imposing the minimum of taxation on imports.

The protectionists of this period, their writers and speakers, sang their songs of victory.

"After four years of real prosperity," says Henry C. Carey, the well-known political economist, "under this tariff of 1842, how great was the change! Labor was everywhere in demand. Planters had large crops, and the domestic market was growing with a rapidity that promised better prices. The produce of the farm was in demand; and prices had risen; the consumption of coal, iron, wool, and cotton, and woollen clothing was immense and rapidly increasing, while prices were falling because of the rapidly improving character of the machinery of production. Production of every kind was immense, and commerce, internal and external, was growing with unaccustomed rapidity."

That conditions during this period were favorable is also shown by an extract from the message of President Polk in 1846, who said:

"Labor in all its branches is receiving an ample reward, while education, science, and the arts are rapidly becoming the means of social happiness. The progress of our country, in her career of greatness, not only in the vast extent of her territorial domain and the rapid increase of her population, but in resources and wealth, and in the happy condition of her people, is without an example in the history of nations."

The American people have always been a mutable people and their love of change has shown itself in nothing more striking than their frequent changes in the tariff, often, it would seem, without any good reason but merely to gratify the whim for something new.

Even while the president was extolling the greatness of the country and the happiness of its people, and protectionists dilated on what protection had accomplished, the pendulum of popular sentiment swung once again.

In 1846 the most thoroughly free trade act ever passed in the United States was put upon the statute books. It reduced the average rate of duty on all imports to about 23 per cent. But this was not its most important feature. It radically changed the entire system of the tariff. Instead of placing protective duties on manufactures and admitting material for manufacturing free, according to the principle of the protective measures, it reduced the duties on manu-



factures and placed higher rates on raw materials and food-stuffs. Edwin Williams, in an article in "Fisher's National Magazine" for September, 1846, commenting on this tariff, says:

"While the British parliament are reducing duties on all articles for the use of their manufacturers, the American congress have increased the burdens of the manufacturers by additional duties on the raw materials for their use; at the same time they have reduced the protective duties. Was there ever a parallel case of injustice in the history of legislation in any other country?"

This tariff of 1846, popularly known as "the Walker tariff," because of the fact that it was framed by Robert J. Walker, then secretary of the treasury, was the ideal measure of the free traders, a "revenue tariff," with no attempt at protection and its duties all laid on the ad valorem basis. Daniel Webster, who originally opposed the protective system, but had by this time become a supporter of that doctrine, said of the bill in a three days' speech opposing it:

"It is not a bill for the people or the masses. It is not a bill to add to the comfort of those in middle life or the poor. It is not a bill for employment, it is a bill for the relief of the highest and most luxurious classes of the country, imposing onerous duties on the masses, and taking away the means of living from labor throughout the land."

The effect of this tariff is a matter of dispute between the protectionists and the free traders, even to this day. The free traders point to the great prosperity of the few years immediately subsequent to its passage, and claim that they were the results of the tariff. The protectionists say that the prosperity of that period was due to the discovery of gold in California, which largely increased the wealth of the country; to the building of railroads, which began to develop about that time; to the Mexican war, which created a great demand for home products and a general activity; to the famine in Ireland, and to wars in Europe.

Mr. Walker, the author of this tariff, laid down the following principles as those upon which it was based:

1. That no more money should be collected than is necessary for the wants of the government.



2. That no duty should be imposed upon any article above the lowest rate which will yield a just amount of revenue.

3. That below such rate discrimination may be made, descending in the scale of duties, or for imperative reasons the article may be placed upon the free list.

4. That the maximum revenue duty should be imposed upon all luxuries.

5. That all minimum and specific duties should be abolished and ad valorem duties substituted in their place.

The bill arranged all classes of articles into nine groups, to pay, respectively, 100, 40, 30, 25, 20, 15, 10, and 5 per cent ad valorem, with a list of articles on which no duty was to be collected. The 100 per cent class included liquors, brandy, etc., the 40 per cent class, wines, and luxuries of like character; the 30 per cent class, manufacturers of iron, wool, cotton, and glass, sugar, coal, soap, and many other articles.

Its chief characteristics were the abandonment of a protective system which its author denounced as discriminating in favor of the manufacturers and against the agriculturist, the workman and the merchant, and the substitution of ad valorem for specific duties.

There was and still is a difference of opinion among protectionists and free traders as to whether the Walker free trade tariff was responsible for the conditions which followed it. Certain it is that there was prosperity for a term of years, though the fact that the gold production at the rate of \$50,000,000 a year soon began, that the war with Mexico caused unusual demands for supplies, and that the demands from abroad for foodstuffs were abnormal because of famine in Ireland and wars, must have had a material effect in stimulating business activity in the United States and producing prosperity. Equally certain it is, however, that by 1854 the prosperity ended and a period of great depression began, continuing until the low tariff was substituted by one thoroughly protective. Importations under the low tariff had been large, and they were of a class produced by home manufacturers, and as a result there was idleness among the manufacturers and their employees. This reduced the home demand for

the products of the farm, and the farmer in turn was unable to buy. The New York "Tribune" of January 15, 1855, says of the conditions then prevailing "Protection and Prosperity," p. 604:

"The cry of hard times reaches us from every part of the country. The making of roads is stopped, factories are closed, and houses and ships are no longer being built. Factory hands, road makers, carpenters, bricklayers, and laborers are idle, and paralysis is rapidly embracing every pursuit in the country. The cause of all this stoppage of circulation is to be found in the steady outflow of gold to pay foreign laborers for the cloth, the shoes, the iron, and the other things that could be produced by American labor, but which cannot be so produced under our present revenue system. The convulsion would have come upon us sooner but for the extraordinary demand in Europe for breadstuffs, growing out of huge famines and big wars, and but for the dazzling and magnificent discovery of gold in California, by which hard money, sufficient to buy an empire, has been called into existence and exported to Europe. If we could stop the import of foreign articles, the gold would cease to flow out to pay for them, and money would then again become more abundant, labor would then again be in demand, shoes, clothing, and other commodities would then again be in demand, and men would then cease to starve in the streets of our towns and cities. If it be not stopped the gold must continue to go abroad, and employment must become from day to day more scarce."

Notwithstanding the depressed conditions, the low tariff party, in control of congress, in 1857, adopted a new tariff law, making even lower rates on some articles, and this remained in force until 1861, when the republican party elected its first president, Abraham Lincoln. That conditions were deplorable during a large share of this free trade period, from 1846 to 1861, cannot be doubted, and that they existed in the face of the fact that California was pouring out gold at the rate of about \$50,000,000 a year is also true. During the period public expenditures exceeded receipts by nearly \$50,000,000, imports exceeded exports by more than \$460,000,000, and the financial condition of the government

during the closing years of the period was such that it could borrow money only by paying high rates of interest. President Buchanan, in a message to congress during the closing years of that period, said that government obligations could not be negotiated at a rate of less than 12 per cent interest. Within recent years the government of the United States has placed nearly \$500,000,000 of its bonds at 2 per cent. That conditions during the period described were serious and were apparently due in some degree at least to the low tariff duties is shown by the following extract from the message of President Buchanan, a democrat, sent to congress December 8, 1857:

"We have possessed all the elements of material wealth in rich abundance, and yet, notwithstanding all these advantages, the country in its monetary interests is at the present moment in a deplorable condition. In the midst of unsurpassed plenty in all the products of agriculture and in all the elements of national wealth, we find our manufactures suspended, our public works retarded, our private enterprises of different kinds abandoned, and thousands of laborers thrown out of employment and reduced to want. The revenue of the government, which is chiefly derived from imports from abroad, has been greatly reduced, whilst the appropriations made by congress for the current fiscal year are very large."

In his message sent to congress in December, 1860, President Buchanan again declared against the low tariff then in existence and adopted by his own party, saying that the financial difficulties of the government required a revision of its schedules, and he recommended a return to specific duties instead of the ad valorem system which had been such a marked feature of the Walker tariff and its successor then in operation, saying:

"Specific duties would secure to the American manufacturer the incidental protection to which he is fairly entitled under a revenue tariff, and to this surely no person should object."

The message from which the above quotations are made, admitting the failure of the ideal free trade of Walker and that which followed it, was the last sent to a congress by a



representative of the low tariff party for twenty-five years. In the following year, 1861, a republican president and congress came into power, a protective tariff was enacted within a few weeks of the meeting of congress, and the protective tariff system remained continuously in operation for thirty-three years. A democratic president was elected in 1884, but his party did not obtain control of both branches of congress during his term, and therefore no change in the tariff system was made. It was not until the second election of this democratic president, Cleveland, in 1892, that a congress in sympathy with his tariff views was also elected, and more than one year of his term had expired before the protective system fathered by the republican party in 1861, and continued with many modifications during thirty-three years, was repealed and a low tariff measure placed upon the statute books.

With the incoming of the republican party in 1861, protection became more distinctively a party issue than ever before. The chief support for protection had been found in the whig party prior to the organization and success of the republican party, and the democratic party had been looked upon as supporting low tariff, but lines were never so sharply drawn before as after the incoming of the republicans. When the republicans found themselves in control of congress and the presidency in 1861, and the necessity existed for raising large sums of money to carry on the civil war just beginning, they naturally turned to the tariff and increased the rates; they made them so high, in fact, that there could be no doubt of their "protective" character. The platform upon which they gained their first national victory declared for protection in the following words:

"That while providing revenue for the support of the general government by duties from imports, sound policy requires such an adujstment of these duties as to encourage the development of the industrial interests of the country; and we commend the policy of the national exchange which secures to the working men liberal wages, to agriculture remunerative prices, to mechanics and manufacturers an adequate reward for their skill, labor, and enterprise, and to the nation commercial prosperity and independence."



The first tariff act passed by the republicans largely increased duties, and was followed by sundry other increases from time to time during the four years of war which followed, which heavily taxed the revenues. As a result of this demand for funds, the tariff legislation during the war period was necessarily crude and unscientific so far as the question of protection pure and simple was concerned. Act after act was passed as the demands of the war grew, and the demands of the manufacturers for more and more protection were generally complied with when not absolutely unreasonable. Edward Stanwood, a recent writer on the history of tariff of the United States, says in his work "American Tariff Controversies" (Vol. II., page 129):

"The extreme character of these tariffs may be judged by the fact that the tariff adopted in 1864 made the duty on wool from 3 to 10 cents per pound, and woolen goods, a 'compound duty,' partly specific and partly ad valorem, of 24 cents per pound and 40 per cent ad valorem. On beer the rate was 35 cents per gallon; on brandy, \$2.50 per gallon; and on refined sugar, 5 cents per pound. In the bill passed in the following year the compound duty system was applied to cotton goods, the rate on the cheapest calicoes being 6½ cents per yard and 10 per cent ad valorem. In this bill the rate on rails for railways was advanced to \$22.40 per ton, and this high rate is looked upon by protectionists as the beginning of the very successful steel rail industry in the United States, and the generally high rates fixed on articles of this class as the basis of the phenomenal success which has attended the iron and steel industry in this country ever since that date."

How much these extremely high tariffs were responsible for the great prosperity and business and manufacturing activity which followed it is, of course, impossible to say. The check upon imports and commerce generally due to the war, the withdrawal of large numbers of men from industrial operations, fluctuations in currency, the great energy required to furnish the materials of war, foodstuffs and clothing for the large armies in the field, and the fact that the government was a heavy purchaser of all these articles at high prices, made manufacturing and commerce extremely active and profitable,

and it would not be fair to say that the tariff was, of itself, the cause of any definite share of the conditions that existed from 1861 to 1865. Following the close of the war it was necessary to maintain high rates of taxation to produce funds to meet the interest upon and reduce the principal of the enormous public debt created during the war, and consequently the high tariff was maintained, the republican party, the party of protection, being still in power.

From 1865 to 1870 it was possible to determine in some degree the effect of the tariff upon industries under normal conditions, and this gave a favorable view of the results, so much so that there was no disposition seriously to reduce the general tariff rates. The census of 1870 showed that the value of the products of manufacturing had grown from \$1,885,000,000 in 1860 to \$4,230,000,000 in 1870. When it is remembered that during a decade of protection, of which one-half was spent in war, with a large part of the country absolutely devastated, the value of manufactures had grown more than in the entire seventy years under the irregular tariffs preceding 1860, the advocates of protection claimed it was a great triumph for their system. The wealth of the country, as represented by the census, had increased from \$16,000,000,000 in 1860 to \$30,000,000,000 in 1870, despite the great destruction during the war.

The fact that revenues were redundant and the rates of tariff taxation high upon many articles which were not produced in the United States and therefore were non-competitive, led to a material revision of the tariff in 1870 and again in 1872, a large number of articles of a non-competitive character being put on the free list. From 1861 to 1872 about 5 per cent of the total importations came in free of duty. After 1872 about 25 per cent were admitted free of duty, but they were non-competing articles. In 1875 occurred another revision and after that date about 33 per cent of the importations were free of duty. Among the articles relieved of tariff duties were tea and coffee, the principle of the protectionists being to remove all taxation from articles which did not compete with domestic production, especially those which were required by the masses, and to maintain high duties on

articles competing with home production and manufacture. In 1880 the census showed the value of manufactures in the United States to be \$5,369,000,000 and the wealth \$42,000,000,000. One feature of the tariff act of 1870 may be briefly mentioned in passing. It placed a duty of \$28 per ton on steel rails, with the fixed purpose of developing the home industry. In the year before the passage of the bill placing this high duty on steel rails, the number of tons produced in the United States was 8,616. By 1875 the manufacture had developed to 259,699 tons; by 1881 it was 1,210,285 tons, and in 1883 the duty was reduced to \$17 per ton, and in 1890 to \$13 per ton. From \$106 a ton in 1870 the price, through domestic competition, fell to \$28 a ton in 1902.

In 1883 another revision of the tariff was made by the republicans, in part for the purpose of reducing the revenues and in part in recognition of the demand of the opposition party for a reduction of duties on certain articles. The rates of duty were reduced on cotton and woolen goods, on raw wool, on some manufactures of iron and steel, and a limited number of agricultural products. It was claimed that the rates on wool and woolsens were reduced below the point of safe protection, and that as a result the sheep industry suffered. Certain it is that the number of sheep in the country fell off several millions in the few years following this act.

In 1884 the democrats, after having been out of power since 1860, regained the presidency by the election of Grover Cleveland. Space will not permit a detailed examination of the causes that led to this political reversal, but it is admitted that a growing feeling in favor of "tariff reform," that is, a reduction of duties that were regarded as oppressive and unjust, and in the interest of manufacturers as opposed to the best interests of the people at large, was one of the most potent influences in breaking nearly a quarter of a century of republican rule. But although Mr. Cleveland was elected his election did not carry with it the control of both houses of congress, as under the American parliamentary system a bill must receive the assent of both houses of congress to become a law. The American president has no power to



initiate legislation; he can act merely in an advisory and recommendatory capacity. Mr. Cleveland strongly urged upon congress the passage of a low tariff bill, and although a bill was introduced in response to his recommendation it did not become a law, and Mr. Cleveland's term ended with a protective tariff law on the statute books.

From 1884 to the second election of Mr. McKinley in 1900 electoral campaigns were fought with the tariff subordinating every other issue. Mr. Cleveland was defeated at the next election, the tariff being the leading question, and Mr. Harrison, a republican, succeeded him. Mr. Harrison took his seat in 1889, and the following year the famous McKinley bill became a law. Although the country had set the stamp of its disapproval on free trade, the republicans could not ignore the growing demand for tariff reform, which they recognized by pledging themselves to revise the tariff if entrusted with the government. Mr. McKinley's bill, which was entitled "A bill to reduce the revenue and equalize duties on imports," was a bitter disappointment alike to free traders and tariff revisionists. It is true that it made several additions to the free list and removed the duty on raw sugar, but its general tendency was to increase duties and to make the average ad valorem rate as high as had ever been imposed. The bill increased the duties on wool and woollens, placed a high duty on tinplate to foster the tinplate industry in the United States; imposed equally high duties on farm products to prevent the importation of agricultural products from Canada and elsewhere; reduced the duty on binding twine for the benefit of the farmers using it with their self-binding reapers; levied a high duty on pearl buttons to aid in building up a pearl button industry in the United States; removed the duty on raw sugar, and authorized the payment of a bounty on sugar produced in the United States, and was, in fact, in the words of one of its admirers, "the most thoroughly scientific measure of protection ever passed up to that time." Under it the tinplate industry and the pearl button industry were established and manufacturing generally was prosperous.

Protectionists hailed the bill as a triumph for their principles and the embodiment of all fiscal wisdom, but the coun-



try was not so enthusiastic; in fact, it was angry and longed for an opportunity to display its resentment. It found it in 1892, when it swept the republicans out of power (it had already defeated Mr. McKinley when he offered himself for re-election to congress), and for the second time Mr. Cleveland sat in the white house, while, to make the triumph complete, there was a democratic majority in both houses of congress. This was the first time in thirty-two years that the democratic party had a free hand to bring the tariff back to free trade principles. But, strangely, it found that there had grown up within itself a strong protectionist sentiment. While the party had in its national conventions usually declared for a "revenue tariff," these declarations were in many cases coupled with a reservation that the revenue duty should be so adjusted as to give "incidental protection." Almost imperceptibly there had grown up among the members of the party a protection sentiment, due, doubtless, in some degree to the influence of the manufacturing industries upon the leaders in their respective sections of the country. When an attempt was made to enact a low tariff the party was divided within itself, and so seriously divided that, despite the resolute low tariff views of the vigorous president, he was unable to carry his plan through congress without great modification. Nearly a year and a half of his administration passed before the measure introduced in congress shortly after his inauguration became a law, and it emerged from its final vote in such unrecognizable condition that President Cleveland refused to be responsible for it by affixing his signature to the act, and allowed it to become a law without his approval.

In the revised and re-revised form in which it finally became a law, it was not by any means so radical a "free trade" measure as had been expected, and not, of itself, capable of so seriously affecting the manufacturing interests as had been feared. But much of the harm had already been done. For nearly two years, from the date of the election of Cleveland in November, 1892, to the passage of the act in August, 1894, the business men of the country had waited in uncertainty, unable to determine what changes would be

made in tariff and prices of foreign commodities, and this uncertainty, coupled with grave financial complications, due to the fear of continued silver inflation and the country going on a silver basis, led to general business depression even before the tariff bill became a law. Following its final enactment there was further depression and suspension of work among those manufacturers seriously affected, and the result was the great commercial stagnation from 1893 to 1896. In those years a large number of factories were closed, hundreds of thousands of men were thrown out of employment, business failures were numerous, many railroads went into the hands of receivers, gold was hoarded, and the money in circulation fell to an unusually low total. Prices of farm products were low, wages were low, employment was scarce, and suffering and hunger were common. "Armies" of the unemployed paraded from city to city, and one of the largest marched from far in the interior to Washington and drew up in front of the capitol, where congress was in session, demanding the adoption of measures for the relief of labor.

It was not surprising, therefore, that in the next presidential election the republican party was returned to power. The protectionists asserted that much of the depression and losses and suffering was directly chargeable to the low tariff and injurious foreign competition; that the fear of an even more radical tariff and the long period of uncertainty and general dislocation of business were equally potent causes in destroying public confidence and injuring credit. But the truth of history compels the conclusion, always maintained by democratic free traders, that they were made vicarious victims of republican folly. Much of the distress of that time was undoubtedly due to vicious financial legislation, to the constant dilution of the currency with silver, which menaced the power of the government to maintain the parity between gold and silver and threatened the country being forced to a silver basis. Silver coinage was republican legislation; the republicans were responsible for it and kept it on the statute books, and they resisted its repeal. That finally it was repealed was due solely to the courage and tenacity and wisdom of President Cleveland. To accomplish this he was

forced to fight his own party as well as his political opponents, but he never swerved, in the end he won, and earned the gratitude of men intelligent enough to be able to appreciate his great services.

But it is idle to attempt a too minute analysis of national psychology as manifested at a general election. The country was in no mood to weigh causes in a delicate balance or to apportion with exact and discriminating justice the proper meed of responsibility. Mr. McKinley had been nominated by the republicans, Mr. McKinley's name was the very synonym of a protective tariff, and the republicans promised the electorate that if they were successful peace and plenty would once more come upon the land. Mr. McKinley was elected in November, 1896, and his election was immediately accepted as an assurance that the breaches in the ramparts of protection would be repaired and the walls would be made so high that they would be invulnerable to assault. The fear of silver no longer existed. Heeding the lesson taught them by Mr. Cleveland, the republicans stood irrevocably committed to the gold standard.

With Mr. McKinley protection was more than a belief, it was almost an immanent conviction. A new tariff law, he held, was vital, and if a thing were to be done the sooner it was done the better. A few days after his inauguration the new president called congress together in extra session, and in July, 1897, the "Dingley act," the existing tariff law of the United States, was placed on the statute books. It was a radically protective measure, the only tariff law since the first one enacted in 1789 that had declared itself as having for one of its objects the encouragement of manufacturing. Its title was "An act to provide revenue for the government, and encourage the industries of the United States."

This act was essentially protective. Raw sugar, which had been put on the free list under the McKinley tariff, and had been made dutiable by the democratic tariff of 1894, was also made dutiable by the Dingley act, but apart from this, the free list was not materially reduced as compared with the McKinley act, but was somewhat increased. Under the Dingley law about 44 per cent of the imports came in free of duty.



In the calendar year 1904 the value of merchandise imported free of duty was \$454,150,388, and of merchandise subject to duty \$536,940,590.

During the period in which the Dingley tariff law has been in existence the prosperity of the United States has been very great, probably greater than in any preceding period, and the exportation of manufactures has begun to be an important feature in the industries and commerce of the country. Exports of manufactures, which in 1896 were \$228,000,000, were in 1903 \$433,000,000, and have continued about \$400,000,000 since that time, despite the unusual home demand due to general prosperity. The money in circulation has increased more than 50 per cent since 1896, and the deposits in the banks of the country have doubled. The census of 1900 showed the value of the manufactures of the country to be \$13,000,000,000, or more than twice as much as in 1880, and the wealth of the country \$94,000,000,000, also twice as much as that of 1880.

This prosperity protectionists ascribe solely to the beneficent effect of the high protection secured by the Dingley act; to the preservation of the home market from foreign invasion, and the consequent steady employment at high wages of American labor. Free traders do not deny the existence of prosperity—it is so palpably obvious that its denial is impossible—but they contend that the high tariff has enabled manufacturers to charge excessive prices for commodities, and thus lay an oppressive burden upon the country.



## THE TARIFF AND THE TRUSTS.

BY SERENO E. PAYNE.

[Sereno E. Payne, chairman of the committee on ways and means of the house of representatives; born June 26, 1843, at Hamilton, New York; graduated from University of Rochester in 1864; admitted to the bar two years later; elected to congress 1883-87 and 1889-95; chairman of the committee on ways and means and member of the High Joint commission on negotiations with Canada on the treaty question.]

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The history of our tariff is coextensive with the history of the country. While we were yet colonies, our mother country took stringent measures to prevent our fathers from engaging in manufacturing. Agriculture and trade were deemed the appropriate occupations for the denizens of these western possessions. Even the furs of the animals caught along our streams and in our forests had to be sent to England to be converted into the headgear of the hunters and trappers who had taken them. This was required under pain of heavy penalties. Our people were indeed hewers of wood and drawers of water for their cousins across the sea.

Our political independence was declared a century and a quarter ago, and finally accomplished after a seven years' war. Our commercial and industrial independence was declared at the same time, and is hardly yet achieved, after one hundred and twenty-five years of conflict.

The most potent causes which led up to the formation of the union out of the several colonies and to the adoption of the constitution grew out of the questions of revenue and industrial protection. The industries and manufactures of the country were fostered and protected during the war of the revolution by means of the embargo and blockade which the exigency of war put upon our ports. When the war ceased, many of our industries were vigorous and healthy infants. That they needed further nursing and protection the result soon demonstrated. Deprived of our market during the period of war, at its close the storehouses and factories of our kinsmen were full to overcrowding with manufactured goods. The English manufacturers had attained better methods and

greater skill than had our own people, whom they could easily undersell in their own market. To our manufacturers the prices at which this surplus stock was offered were ruinous. Our lusty infant industries were soon put to sleep, to wait long for an awakening.

Not only did the invaders take our market, but they overstocked it. The spirit of speculation set in. Our people purchased upon credit beyond the limit of reason. The state of the continental currency, irredeemable and unlimited in volume, contributed to the inflation and to the resulting confusion. In addition to this, colonial credit was a thing that did not exist except in name. National credit there was none, because we were not a nation. The thirteen sovereign and independent states would not contribute to the federal treasury pro rata or on any fair basis. The colonial treasury became bankrupt, and so did the individual citizen. This condition was not confined to the manufacturers or to the tradespeople. Agriculturists felt it none the less; their crops, their stock, and even their farms, were sold by the officers of the law to meet the annual taxes.

Then each state that possessed manufacturing and commercial interests sought to stem the tide and to discover a remedy in legislation. Tariff laws were enacted by some of the states, both upon foreign importation and that from sister states. Tariff wars followed between the several states, and the confusion became universal. It seemed almost that the liberties of the people, won so gloriously in the war, were well nigh lost in the chaos that followed the declaration of peace. The constitutional convention was forced upon the reluctant states, one by one, by the exigencies of the hour. There was no central power to levy taxes and to provide for the common defence or general welfare. Out of these necessities was born the immortal thought of a more perfect union of the states. The result was our constitution, so wonderfully adapted to meet the exigencies of the times and the various problems that have since arisen.

It is not surprising that the first step under this constitution was the enactment by congress of a tariff to encourage manufacture, as well as to provide revenue. The statesmen of

that day would have failed signally in the eyes of their constituents had they postponed that important measure, or lost sight of the necessary element of protection.

From these events sprang the American idea of a protective tariff, which was so universally accepted in 1790, and which has probably never failed since to command the assent of a majority of our people. Obscured by other issues, it may have seemed at times to lack popular approval, but, during nearly the whole period, it has held a place on our statute books, in positive and potent laws that reveal the clear purpose of protection to American industry.

The fundamental reasons in favor of the protective policy have not changed during the century. These are found in the abundance of our natural resources and in the capabilities of our people, as well as in their demand for better things. Providence has dealt most bountifully with us. Our forests and our mines are rich, abundant, and well nigh inexhaustible. Our forests yield us timber in every variety, and fuel for manufacture, while our mines of iron, copper, and lead are unsurpassed. Their products are not only unlimited in quality, but easily accessible, with quality unequalled. Cotton is the staple product of more than one-fourth of our states, which furnish two-thirds of the raw cotton of the world, and wool can be produced successfully in every part of our country. Hides and pelts are found in abundance. In fact, there are but few of the staple manufactures for which the raw materials are not found here.

Nowhere else is there such an abundance of power. Here are rivers and streams that creep with resistless force toward the sea, and that wait only to be harnessed by the hand of man. To-day this force is doing the work of millions of toilers, while the undeveloped forces now wasting are equal to the work of many millions more. This power is supplemented by the cheapest and most abundant fuel. Our coal mines develop new wonders every year. We have the only anthracite coal, and we have bituminous coal of the best quality scattered in rich profusion over our vast territory. In addition to this, we have opened up nature's storehouses, where for centuries there has been accumulating a never failing



supply of the richest petroleum in the world. As if nature had not done enough, she has in recent years revealed to the enterprise of our people untold supplies of natural gas. For developing heat and power our resources rival the world. It were the sheerest folly for a people so well equipped to confine its energies to the peaceful and alluring pursuits of agriculture. If it is our mission to feed the world, we are doing our part of it; but we are slow to believe that this is all providence designed for us to do.

Then we have the men. They are stimulated by our bracing climate. Even a foreign born citizen does not escape its influence. His step is quickened; the "get there" principle takes hold of him. The clear and bracing ozone stimulates both mind and body. The result is that a vigorous and healthy brain drives a sound body. Confront such a man with any problem, and every faculty is alert to solve it.

Then there is ever present, hope, with its rich possibilities and promise. Two men are laboring side by side to-day; in ten years one is likely to become superintendent or proprietor. A large percentage of our successful manufacturers are workmen who learned the business by hard and successive steps from the bottom up. The real magnates of the steel trust came up from the ranks. It is these lessons of hope that lighten many a weary burden and often render irksome toil a pleasure. Hope is the mainspring of unceasing endeavor. Nearly one-half of the American people own the homes they occupy, as the reward of their labor. The remaining half hope some day to own their homes also.

But something more is needed than a bracing climate and a hopeful man. Our people must have opportunity. The man and his work must be brought together. He must come face to face with the job he is to perform. And this is just what a protective tariff undertakes to do. From the beginning we had a growing market here. Our farmers had to have clothes, implements, and the increasing necessities of life. We had the men and the raw material; but it required further, skill and experience, which we did not have. To obtain this years of effort and training were demanded. Meanwhile our friendly neighbors across the water were using



their skill and training, already attained, to supply the wants of our people. Of course they could do this more cheaply than we, because they had learned the trade, and we had not. A tariff was imposed with the idea that it would add at first to the price of the commodity to the consumer, and thereby protect our labor in the educational period, the "infant" period of the industry. The tariff acted like a charm. It gave our people the opportunity, it confronted the workman with the problem to be solved. He applied himself to the task of making things to supply the wants of our people.

But the American workman, native or imported, labors with his brain as well as with his brawn. He prefers head work to hand work. He is constantly seeking some way by which to improve his surroundings. He is not satisfied with the old methods until after he has tried in vain for better. He is not content to go in the old rut made by his ancestors. He is ever on the alert to discover some force in nature which will do the manual part of the work for him, while he quietly sits by and "bosses the job." And so he becomes the inventor. Every branch of our industry protected by the tariff has been perfected by the inventive genius of the American mechanic. But when we came to impose the protective tariff, we found that it did not always, or even usually, advance the price. We soon learned that our kind friends across the water had been profiting by our ignorance. The capitalist over there had been making money by getting exorbitant prices, while he controlled our markets. Afterwards, he frequently divided the tariff with our importers, and so competed with our new manufacturers at the old price. We found that we need the tariff to prevent the dumping of foreign goods on our markets at ruinous prices, with the intention of breaking up our industries, thus destroying the limited capital and credit of our manufacturer. After our industries were established, home competition entered and with the advantage of our improved machinery and great natural resources, the price invariably became lower than it was before the tariff was imposed. Could we have kept our improved machinery and methods in this country, we should have long since undersold the world. But our foreign rivals continued

to watch us, and were not slow in importing our improvements and adapting them as their own. This kept alive the competition and continued the necessity of protection by way of a tariff.

Our workmen did not confine their mental activities to the invention of new machinery and new methods. They were keenly alive to their own wants and interests. They rightly claimed their share of the fruit of their skill and toil. Each man looked forward to a home of his own. And when this was obtained, it was but right that he should have the comforts of a home. The daily living must be better. Good food, and plenty of it, is a necessity for brain work, as well as for skilled handicraft. Greater and increased wages were demanded. These could not be paid unless the profits of manufacturing justified it; otherwise bankruptcy would follow. There must be a fair division between employer and employee, between capital and labor. Here came the conflict, generally settled by mutual agreement, too frequently by strikes, disastrous for the time being. But, in the end, we have seen a constantly advancing wage scale, which has made our mechanics the most prosperous class of wage earners in the world. And yet with our wage rates often even more than fifty per cent higher than those of our rivals, we are able, in some branches of manufacture, to meet them in competition in the markets of the world.

This high wage rate has contributed wonderfully to the comfort and advancement of our people. It has not only elevated the condition of the laborer and educated his children, but has added untold benefits to the general prosperity of the country. How many a large factory is now owned by one of these men, founded on the savings of his ample earnings, and built up by his skill and industry! The added wants of himself and of his family have largely created a market nowhere equaled in the world.

The watch industry well illustrates the history of the benefits of a protective tariff. Not many years ago no watches were made in the United States. We imported nearly all of them from Switzerland. Since watches were a luxury, we imposed a duty of ten per cent upon them, a mere revenue

duty. One day congress increased this duty to twenty-five per cent ad valorem. Then it was that American enterprise took the matter up. A factory was built, a few foreign watch-makers were imported as teachers and the boys from the neighboring farms and villages were called in to learn the mysterious and delicate handicraft of watchmaking. The American boys were quick to learn, and, as often happens, were not satisfied until they knew more about the subject than their teachers. Then followed the weary tension of muscle and the ever present desire to employ the brain in the daily task. Gradually the thought was worked out, and in turn it developed delicate machinery, with muscles of iron and nerves of steel, capable of making the fine mechanism of the watch. The machine proved more delicate than the human hand, and moved with such eternal precision that it seemed almost imbued with human thought. The result was that the delicate parts of a watch were produced, with each part fitting every other part, and when these were assembled together, they formed a better watch than the hand of man had ever before fashioned. The machines multiplied. The price of watches went down almost to a song. The new watch found its way into the house of the American farmer and artisan; it crossed the sea, even to Switzerland. In the cradle of the watch industry of the world, Geneva, the American tourist will see placards in the windows, "American watches sold here," and if he interviews the shopkeeper, and can disguise his nationality, he will learn from him that the "American watch is the best in the world."

Perhaps no better illustration of the advantage of a protective tariff can be afforded than that of the tin plate industry. Prior to 1890, we received all our tin plates from Wales. By reason of a combination there, the prices exacted in our market were greatly in excess of the prices demanded in any other export country. Indeed, the price exacted was high enough to warrant the establishment of the industry. This had been undertaken on two separate occasions prior to 1890; but immediately the prices were cut by the Welsh manufacturers to a point below the cost of production here, and our new industry was completely destroyed. The



McKinley act placed an adequate duty upon tin plate, and now we are manufacturing substantially all the plates that are used in America. Our only importations are in turn re-exported, after being manufactured into packages, with a rebate of ninety-nine per cent of the duty paid. This industry gives employment to 22,000 of our citizens. The price here is now lower than that exacted twelve years ago, and the article itself is vastly improved in quality.

This tendency to lower prices is the effect of competition. Our country is so vast that nowhere has a complete monopoly been maintained in any product except petroleum. Hence it is that the establishment of an industry on a profitable basis leads to competition and the desire to dump a surplus of manufactures upon the market at lower prices. We have in our own country the greatest area of free trade in all the world, with a population that consumes from a quarter to a third of the world's manufactured products. Competition is nowhere else so active and the usual margin of profit nowhere else so small.

The tendency of manufacturers everywhere is to seek new markets after the natural home market has paid all the non-productive expenses of the establishment, such as office and sales expenses. They can afford to cut their profits and enter the new market with a lower price. The foreign manufacturers desire our magnificent market as a dumping ground for their surplus stock. They even pay the entire tariff at times to get in, with a net loss as a result.

Shall we let them in on a free trade basis? In times of depression they would undoubtedly lower our prices and cripple our industries. In prosperous times, with good markets and good prices, they would naturally be occupied with their own home trade. In other words, they would cripple our market when it needed support, and would not injure it when it was in a position to bear the injury. In times of depression they would force the closing of our shops, and would drive our people to lower wages or idleness. This, in turn, would destroy our own home markets, and no one except the foreigner would be the gainer thereby. A stable protect-



ive tariff on a fair basis results in a stable market, continued employment, and general prosperity.

It is now claimed in some quarters, that a protective tariff is responsible for what are known as trusts and combinations. In my judgment, the only connection between trusts and the tariff is this,—the tariff has enabled us to build up countless prosperous industries. Before there can be a trust, there must be an industry on which to base it. The tariff has produced these industries. In no other way is it responsible for trusts.

But let us first consider the history of trusts in the United States. It was found that after an industry was established and capital was ready to enter upon the same line of business, competition sprang up that soon became strong and active. Each manufacturer was ready to enter upon his neighbor's territory. He offered his goods at lower prices. This cut was always promptly met, and soon the margin was too small to make a fair return upon the capital invested. Then the manufacturers would get together and resolve to end the war of prices, which was ruining their industries. They would agree to divide the territory and to maintain fixed prices. But the agreements were like ropes of sand. Some party would make a confidential price below the rate agreed upon, and soon the agreement would fall to pieces. Then trusts were invented. They originated here, precisely as they originated, and as they exist, in Germany and in the United Kingdom.

Perhaps as good an example as we can find of the earlier form of a trust is in "The Sugar Refineries Company," which was formed in 1887. The facts in respect to this company have been pretty thoroughly investigated in an action brought by the people of the state of New York against the North River Sugar Refining Company, which was one of the original parties to the deed of trust. This case is reported in full, in 121 New York reports, page 582. There were seventeen sugar refining companies which entered into this combination. Some of these companies were copartnerships, others were incorporated. Under the original agreement, all the copartnerships were to be speedily incorporated and to issue stock. All this stock was transferred to a board consisting of eleven mem-

bers, named in a deed of trust, and in lieu of it the trustees issued their certificates, showing that the holder was entitled to so many shares of the Sugar Refineries Company. The capital stock of this combination was fixed at fifty million dollars, fifteen per cent of which was issued to the trustees and the balance divided among the several parties to the combination, to be distributed by the several directors to the various shareholders. Ample provision was also made for issuing additional capital stock and for the raising of money by mortgage or otherwise upon the various properties for the purpose of buying up other sugar refineries in the United States. The aim seemed to be a combination of all engaged in the sugar refining business. The stock of the North River Sugar Refining Company was transferred to a member of the board of trustees for the sum of \$325,000, the value fixed by vendors themselves. Of course they did not undervalue it. But the board issued for this \$700,000 of capital stock, thereby more than doubling the valuation; or in other words, more than one half of the capital stock issued for the property of this corporation was "water." Although it does not appear in the report of the case, it is not likely that the other members of this combination fared any worse than did the North River Sugar Refining Company. The deed by which the transfer was made of all the properties states that "the objects of this agreement are: (1) To promote economy of administration and to reduce the cost of refining, and thus to keep the price of sugar as low as is consistent with reasonable profit. (2) To give to each refinery the benefit of all appliances and processes known or used by the others, and of a character to improve the quality and diminish the cost of refined sugar. (3) To furnish protection against unlawful combinations of labor. (4) To protect against inducements to lower the standard of refined sugars. (5) Generally to promote the interests of the parties hereto in all lawful and suitable ways."

Of course, if the objects stated above in 1, 2, and 4 had been faithfully carried out by the board, the general public would have had no reason to complain of this branch of the business. Economy of administration, benefit of all appliances and processes, known or used, that are of a kind to

improve the quality and diminish the cost of refined sugar, and to protect against inducements to lower the standard, with the intention of thus keeping the price of sugar as low as would prove consistent with reasonable profit,—all this would have inured to the benefit of the general public, and would have rendered this combination a popular one, if faithfully carried out. It was hardly necessary, however, to organize this great aggregation of capital in order to protect the business against unlawful combinations of labor. The laws and the courts of the country could be as readily invoked by each individual corporation against unlawful combinations. If, however, the object was to protect against lawful combinations of labor, then, perhaps, the efforts of the combined forces would be more effective than those of individual companies.

Here, then, was a trust, pure and absolute, formed by these seventeen companies. Each put its property, and endeavored to place its franchise, under the control of a board which was to hold the property as joint tenants and as trustees, but had the power of absolute control. It was a trust pure and simple. It was to organizations like this that the term "trust" was originally applied and seemed to have force and meaning. The word has been amplified since and applied to every great combination of capital whether in the form of a trust, a corporation, or even a copartnership. It is well to remember this distinction, because the Sherman law, passed by congress in 1890, was aimed at trusts pure and simple. Under this law the federal courts aided by the state courts, invoking the state statutes, have wiped out every form of trust organized on the basis of the Sugar Refineries Company as detailed above. Most of such trusts, however, have found refuge under the laws of some state, as has the American Sugar Refining Company, an incorporated company which has succeeded the old sugar trust.

The board of trustees, formed as we have seen, forgot to carry out the original intention of the deed of trust. They did endeavor "generally to promote the interests of the parties hereto" with a vengeance, but they evidently did not keep the price of sugar as low as was consistent with reasonable profit. Notwithstanding the enormous watering of stock, dividends



unheard of before were declared and paid upon the certificates issued by this board of trustees. As the product of this combination was a necessary of life required by every class of people, the excessive profits demanded soon called the attention of the people to the existence of this monopoly. Nobody objected to refining sugar in this country. Indeed, there was every reason why this business should be carried on exclusively in the United States in order to supply our markets. The object in forming the sugar schedule of the tariff, in 1890, and again in 1897, was to learn, as nearly as possible, the exact cost of refining sugar, and then to adjust the tariff so as to protect the labor interests, and no more. Investigation into this subject proved very irksome and troublesome. It was impossible to get at the exact facts, as the experts were not inclined to reveal the secrets of their business to the committee on ways and means. Different statements were made as to the cost of refining by different refineries, and then the best that could be done was a compromise rate for the differential duty between raw and refined sugar.

It has been claimed, and it is probably true, that by reason of this great aggregation of capital with a large reserve, this company has been able to buy raw sugar in the markets of the world at a lower price than its competitors. If it had given a reasonable proportion of this saving to its customers, as well as the saving which came to it from the employment of the best processes in refining, the combination might have resulted in advantage to the consumers of sugar. On the contrary, enormous profits and extravagant dividends forced from the people for a common necessary of life, have richly earned for this particular trust widespread and just condemnation.

The Standard Oil Trust was formed on similar lines for the purpose of controlling the products of petroleum. Early in its history, it owned a large proportion of the oil fields of the United States and controlled transportation, and especially the pipe lines that were established. In fact, all trusts existing in the United States prior to 1890 were formed in a similar manner.



In 1890 congress enacted a law which has been known as the "Sherman anti-trust law," "to protect trade and commerce against unlawful restraints and monopolies." This law declared every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several states or with foreign nations, illegal, and adjudged every person who made such contract guilty of a misdemeanor punishable by fine and imprisonment. It made it the duty of the attorney-general and the district attorneys in their respective districts to institute proceedings in equity to prevent and restrain such violations. It also forfeited to the United States all property owned under such a contract that was in the course of transportation from one state to another or to a foreign country. It also allowed threefold damages to any person who was injured in his business or property by reason of such a combination. It is not too much to say that this act of congress, together with the actions of the courts in some of the states, utterly destroyed the combinations then existing and known as trusts.

But since that time the old combinations have assumed new forms, and are organized on a different basis. Taking advantage of the manufacturing laws of the several states, capitalists who now desire to form a combination become incorporated under the general laws, with sufficient capital to purchase the property of all the interests affected. This giant corporation buys up the property of all minor corporations which are to come into the combination, and finds ample protection for its business, under the laws of the state in which it is incorporated. It is a misnomer to call such a corporation a trust, and yet, as such corporations succeeded the trusts and performed all the functions for which the trusts were organized, the word "trust" has been popularly applied to them, and has acquired a distinct meaning when so applied.

The tendency of business in modern times has been toward large capitalization. Competition has become so great and close that the percentage of profits is very small. There are some legitimate considerations which induce manufacturers and others to enter into large combinations. In the first place, the office expenses are smaller in proportion to the

output of the establishment, and as the office expenses belong to a class that is non-productive, this reduction makes directly for an increase of profit. Then, materials used in manufacturing are purchased more cheaply in proportion to the amount required, and in this respect the larger corporation has the advantage. In addition to this, the more nearly competition is done away with, the greater reduction there is in the cost of advertising and selling the products of the factory. These are legitimate considerations, and where these savings are fairly divided with the consumer, such combinations do not become unpopular.

The temptation, however, is to increase the price instead of to reduce it. In buying up the various smaller concerns an exorbitant price is often asked. This difficulty is met by issuing stock greatly in excess of the amount of the actual value. Thus the stock of the new concern becomes "watered," and sometimes represents twice, and often three times, the amount of the value of the properties. On this dividends must be paid to maintain the price of the stock. This fact, added to the incentive of greed, is a powerful factor in determining the price. And herein is the evil which arises from this method of combination. Too often it results in injustice, in an oppression of the people.

The American Sugar Refining Company and the Standard Oil Company have both become incorporated, and are organized under the method last described. Some months ago the president of the American Sugar Refining Company is reported to have stated that the tariff was "the mother of trusts." But he is also reported to have added that the tariff had no connection with the American Sugar Refining Trust. This incongruous statement only proves that the matter had not been thoroughly considered by him before he made the statement.

Partially because it furnished a large portion of our revenue, which is easily collected, and also for the protection of the beet sugar industry, which is most promising in the United States, a full protective tariff is levied upon sugar, and has been so exacted upon refined sugar for three quarters of a century. If the tariff has any connection with trusts, certainly

the American Sugar Refining Company is the chief beneficiary.

But the history of trusts, especially in Great Britain, would seem to demonstrate that a protective tariff is in no sense responsible for a trust. In only one other country in the world have trusts so flourished as in Great Britain. And yet every article controlled by a trust in Great Britain is imported free of duty. In that country, at least, trusts exist and flourish in spite of free trade and without any aid from a tariff.

The greatest monopoly in the United States, and the most powerful trust, is the Standard Oil. And yet this monopoly and combination grew up, and has become more flourishing than any other in the world, while every product of petroleum was on the free list. It conclusively proves that a trust does exist and flourish without the aid of a protective tariff. These examples and others that might be brought forward, seem to demonstrate that the tariff is not the mother of trusts.

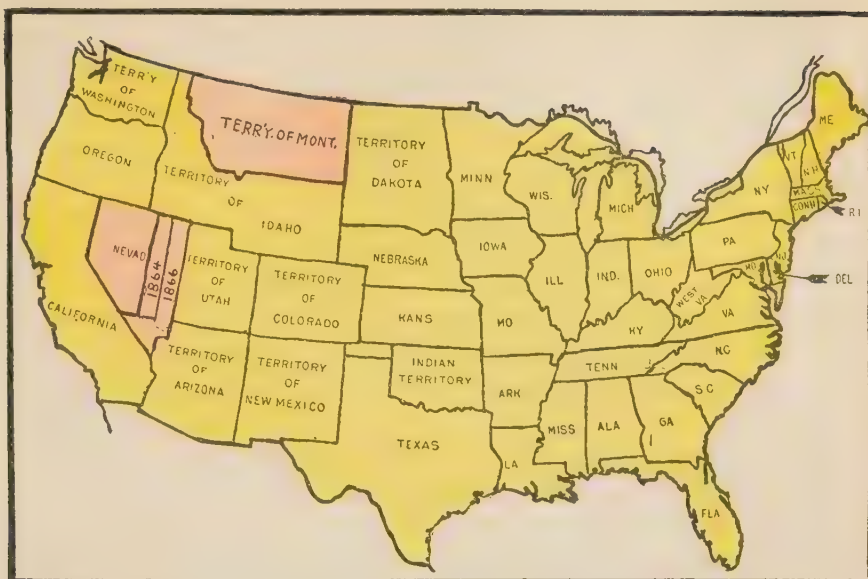
This much is true, however, a protective tariff is the mother of our industries. It has given the American mechanic the opportunity which he needed to learn how to do the world's work, and how to do it in the best manner, with the least expense of time and labor. Having had this opportunity, our people have equaled, and generally excelled, all others in the perfection of their manufacturing industries. It has helped to create a manufacturing business in this country without a parallel in the world. It has developed a market which exists nowhere else. It has created industries and fostered factories. In a word, it has developed a magnificent business of manufacture. Without this there could be no combination of manufacturing interests, because there would be nothing to combine. But in no other sense can it be truthfully said that a protective tariff has had anything to do with the origin of trusts and combinations. If the result of free trade should be to destroy these industries in favor of their rivals across the water, there would be nothing left to combine, and so combinations here might be destroyed in favor of those existing abroad.

But suppose articles made by trusts were put upon the free lists. There is now, so far as we can recall, no article at

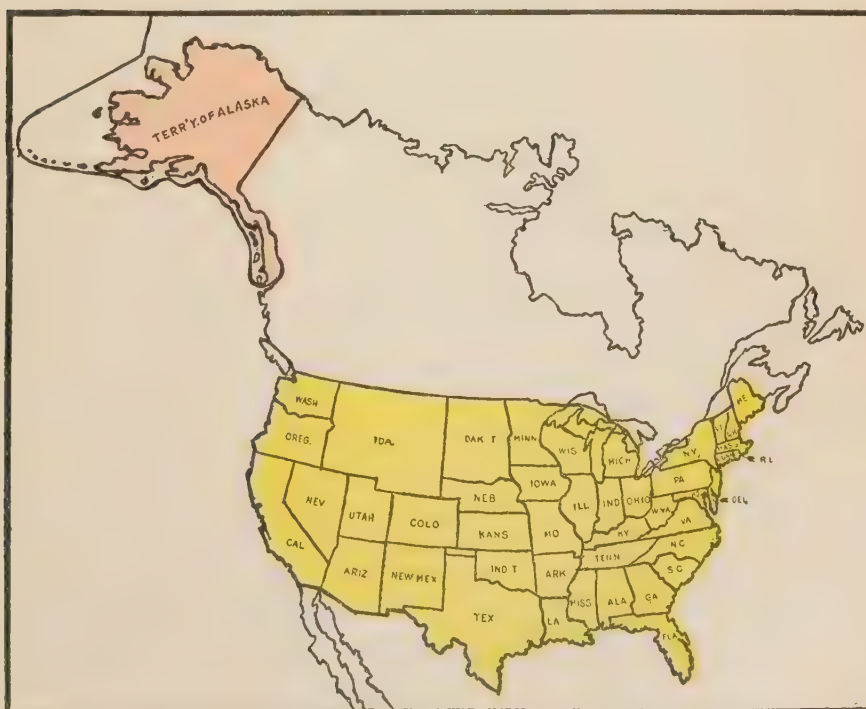








NO. 31.—1864. MONTANA TERRITORY FORMED FROM NORTHEASTERN PART OF IDAHO TERRITORY. ADDITIONS MADE TO NEVADA IN 1864 AND 1866.



NO. 32.—1867. ALASKA PURCHASED FROM RUSSIA FOR THE SUM OF \$7,200,000.



present produced in the United States, except the products of petroleum, in which competition does not exist. The American Sugar Refining Company finds a most active and alert competitor in the Arbuckle Company. As was predicted when the tariff of 1897 was under discussion in the house, the competition of beet sugar factories is making itself felt, and it affects the price of sugar. These factories are growing in importance from year to year, and now furnish about ten per cent of our total consumption of sugar. If our present laws are continued, it needs no prophet to foresee that our beet sugar will, at no distant day, furnish the American consumer the proportion that it furnishes the world, three fifths of the amount consumed.

Recently the billion dollar steel company has been formed. But the number of factories outside of the trust is legion and is increasing every day. Even some of the men who sold out to the new combination have taken advantage of the large capital furnished them, and are putting up new steel plants. A recent number of "The Iron Age" gives the details of this increase. It looks as if our capacity to produce steel would double in the next two or three years.

Trusts did not originate in the United States, nor has their highest development been found here. As early as 1873 the Steel Rail Trust was established in Austria. There were many establishments and the annual output was 120,000 tons. The demand dropped off to 60,000 tons, and in order to meet the force of the vigorous competition which followed, various companies formed a combination that apportioned the orders among the different factories and fixed the price (soon advanced); and the factories thereby escaped the threatened disaster. Since that time the number of Austrian trade combinations has steadily risen, until now it embraces nearly every species of manufacture, small and great. These combinations have for their chief object the regulation of production and the constancy of prices. They have all the features which formerly attached to such organizations in this country for the maintenance of prices. However, there seems to be no legal difficulty in Austria in the way of compelling the enforcement of the agreement. Indeed, these contracts are recognized by



the Austrian law and enforced by the courts. These combinations have all the objectionable features that have been charged against the American trust. Bills have been introduced in the parliament to destroy these combinations, but they seem to lie in abeyance. Our consuls reported last year that the number of these trade combinations was legion, and existed in every branch of manufacture and trade.

In Belgium various industrial combinations exist. Among the objects of these combinations is the fixing of the prices at which products shall be sold for internal consumption. The enterprises are conducted independently, but no one dares to sell below the price fixed, under the heavy penalties which are enforced. Such combinations, or syndicates, embracing every branch of industry or commerce, formed for the purpose of controlling the markets, have existed for years. There seems to be no general feeling against these combinations in Belgium, and, during a debate last year in the Belgium house of representatives relative to the petroleum monopoly, it appeared that the balance of opinion was strongly in favor of trusts. Our consuls report that several hundred syndicates and trade combinations exist in Belgium at the present time.

The organization of trusts in France is prohibited by law. The criminal code provides a penalty of fine and imprisonment for this class of offences. Notwithstanding this statute, it would appear from our consular reports that some of the proprietors of large manufacturing interests have formed an agreement to sell the products of their various concerns as one individual and at fixed prices. The quantity to be supplied by each concern is also agreed upon.

Because of the existence of this criminal law in France, it is difficult to get at the facts in regard to the trade combinations or trusts which are in operation there. Sugar refining is in the hands of a few large establishments which by agreement control the production, sale, and price of sugar. The borax industry of France is said to be under a trust, as is also petroleum. In the latter industry, three principal refineries organized themselves into a syndicate for the purpose of monopolizing the industry and controlling the market. They immediately set to work to bring the smaller refineries into

the combination. A uniform price was established, to be maintained or modified weekly by the members of the original syndicate, who also put a limit on the production of each refinery. Each firm agreed not to sell below the fixed price. They also entered into a contract with the Standard Oil Company of the United States, and, later, with the firm which had the monopoly in France for the sale of Russian petroleum. This was proved to be a very prosperous venture and has existed there a long series of years. Our consul at Marseilles reports, "In spite of stringent legislation directed against the artificial manipulation of prices in France, and the popular conviction that combinations of capital in the nature of trusts are not to be found, I discovered that syndicates have been successfully organized, and in this city are now in more or less undisputed control of the following commodities or utilities: sugar, rice, sulphur, candles, coal, petroleum, tiles, matches, tobacco, transportation by land, and transportation of immigrants." It will be seen that while France has the most stringent laws of any country in the world, and has fewer monopolistic syndicates than any other great country, yet the trusts are frequent and very powerful there.

Trusts abound in Germany. They are called "cartels," or trade syndicates, and are defined by an eminent German authority as "a combination for the purpose of maintaining the competitive power of its members, notwithstanding their varying individual facilities, against the advantages enjoyed by monopolists:" (1) By obtaining a uniform maximum selling price for products. (2) By the creation and maintenance of a normal and rational demand for materials and labor. (3) By creating a monopoly for every member or for every group of members in each branch of production.

There were five of these German trusts in 1870, the number of which increased to 345 in 1897, divided into the following groups: the chemical industry 82 syndicates, iron 80, stone and ores 59, textile industry 38, paper manufacture 19, wood and manufactures of the same 18, coal and coke 17, metals, (exclusive of iron and steel) 15, food products 12, leather and leather goods, five. On the first of January, 1898, there were 224 kinds of raw materials and manufactured articles, the pro-

duction, purchase, manufacture, and sale of which in Germany were controlled by syndicates, and the number has steadily increased since that date. There were six "cartels" governing transportation and international selling agreements with various other countries, England, France, Belgium, Switzerland, and Austria, regulating the selling price, as between two or more of these countries, of the following articles: carbonate of ammonia, borax, uranic colors, muriatic acid, milk sugar, hydrate of chloral, soda, Thomas meal, alizarin, oxalic acid and potash, iodine, strontium, bromine, certain fertilizers, chromate and other salts of potash, saline products, dynamite, glanzgold, sporting ammunition, rails, billets, wire, gas pipes, wood screws, cement, mirror glass, coke, raw zinc, bismuth, lead, and copper.

The dynamite trust covers nearly all of the new explosives. It includes Germany, Switzerland, France, Belgium, and Great Britain, and is managed from London. It has forced advances in price upon some of the great governments under which it exists.

The Rhenish Westphalian Coal Trust controls the mining and prices of coal in western Germany. It estimates the amount of coal requirements, and apportions this amount among the members, and fixes the price, which is obtained under all circumstances. All branches of the German iron trade seem to be controlled by syndicates. The agreement of these syndicates is iron clad. Each member must live up to all the rules or incur a heavy fine. This fine is secured in advance by the signing of a blank acceptance, which is filled in by the treasurer and put into circulation. If an excess of iron products has to be placed upon the market abroad, at a price below the cost of production, the loss incurred is assumed pro rata by each member of the combine, and is made up by the higher price received in the home trade.

Next to Germany, Great Britain seems to lead the world in the extent to which its industries are under the control of trusts. These combinations are so frequent over there as to excite little attention or interest. They control almost every branch and kind of industry. To give any detailed account of their extent or of the various branches of manufacture



which they control, would require more space than is accorded to this article. These trusts are organized under the incorporation laws and also as a combination of many firms. The fact that all the articles covered by trusts in Great Britain are imported free of duty would seem to indicate that the tariff in Great Britain is not the "mother of trusts." While these monopolies in Great Britain are frequently denounced as raising the price of manufactured articles and not increasing the wages of laborers, yet there is a large conservative class who defend them. Certainly there does not seem to have been any concerted effort to check the tendency toward the combination of capital, which might be so readily accomplished in Great Britain, where there is no division of legislative authority, and where the power of parliament would be absolute in enacting any laws it saw fit to make for their suppression.

To return to the subject of trusts in our own country: here we find the fiercest competition in every branch of industry over which some trust is ambitious of control, except in the one item of petroleum. A large percentage of the business is done by competitive factories that are independent of the trust. They fix their own prices, a fact which tends to regulate the price at which the product of the trust is sold. But these corporations outside of the great combinations are frequently weak in financial ability, although not in business experience or in modern shops. Where an article of manufacture needs the protection of a tariff, the result of a repeal would first be to drive out and destroy the weak and smaller concerns in the business, before it would have any appreciable effect upon the great combinations of capital. Indeed, the legitimate saving which these great combinations can make from the lower percentage of cost in selling, in office management, and from the great advantage in buying materials, would aid them in meeting successfully all foreign competition, while the smaller concerns would require the aid of a protective tariff, in case the surplus of the other manufacturing countries of the world should be dumped upon our market. If to remove the tariff would be to destroy domestic trusts, the yoke and burden imposed by the trust abroad would be more grievous to be borne.



It is evident that the Sherman law of 1890 was as effective as any law that could be enacted by congress under the provisions of the constitution. No one contends that the federal legislature has any jurisdiction in the matter, except that obtained through its power to control interstate and foreign commerce. It seems that all the powers which congress has under this clause of the constitution have been fully brought into requisition and made into law in the Sherman act of 1890.

At the last session of congress, an effort was made to amend the constitution of the United States, and to give congress control over these great corporations. But the believers in the doctrine of state rights would not consent to such a change in the fundamental law. Nor is it probable that the necessary two-thirds vote can ever be obtained in both houses of congress in favor of such an amendment. It would look, therefore, as though congress were powerless to do anything by reason of any method which has been suggested of coping with these so-called trusts.

The legislatures of the several states undoubtedly have the inherent power to deal with these corporations. The latter cannot exist except for the incorporation laws of the state. In fact, some of the states in which no manufacturing business existed at the time have passed stringent laws in relation to monopolies and trusts. But only a few of the states have thus declared by legislative act against these corporations. And it would seem that in the state of Texas, where there has been a recent wonderful discovery of petroleum, they have put some of the provisions of these laws into a state of "innocuous desuetude."

But in the commercial states where large manufacturing interests exist the corporation laws are made very liberal. It has been the policy of these states to make the laws liberal in order to attract the business corporations, because they would add to the growth and prosperity of the respective states. The liberal laws are not likely to be altered under any change of political administration. The sentiment of the people is not in favor of any such change.

So it is hardly to be expected that much will be done in the near future, by the legislatures of the several states to destroy the great corporations. No one state can afford to go out on such a crusade as this, single-handed and alone; the result would not be to destroy the monopoly or the combination as was intended, but merely to drive it out from the borders and confines of the state and compel it to seek a refuge and factories in some other state, without in any way removing the burdens which result from the great combinations of capital from the shoulders of the citizens of the state from which the monopoly had been expelled. The instinct of self-preservation would prevent, in all probability, the enactment of anything like uniform laws denouncing trusts and combinations and destroying them, by each of the forty-five states of the Union. The outlook, therefore, for the destruction of these trusts by state laws does not seem to be promising.

We are differently situated from the countries of Europe in this respect. There they have but one kind of legislative body, and this has supreme control,—the power both of our federal and state legislatures. It would be easy for England or Germany to destroy trusts, if the popular feeling demanded it, by a single legislative enactment. The difference in our institutions seems to be a bar to such a procedure. But the states can do much to prevent injustice and robbery by these great combines. New York has enacted a statute, with many excellent features, which has just been declared constitutional by our court of last resort. This is an important field for good legislation. The people will ultimately see that it is fully occupied.

Something can be done, and has been done, in the way of stimulating competition. As we have already seen, a protective tariff tends to foster and to build up competition. Every successful corporation which is launched in a particular business, great or small, is an incentive to the holders of the abundant capital which now exists in this country to engage in a similar branch of business. This is having its effect every day. New factories are being built in every portion of the country, new enterprises are started, and there is no branch of industry, except the refining of standard oil, which is on the free list,

that does not have to meet and overcome this competition. The main hope of destroying trusts or rendering their operations harmless is in the competition which results from the natural laws of trade, fostered, when needed, by the protective tariff. Nor need we look with despair at this simple remedy. Competition has regulated trade through the centuries. It is the most potent force in commerce to-day. It is destroying trusts abroad. It is keeping the level of fair prices here and cutting down and deferring the dividends upon the watered stocks of trusts. The most immediate danger to-day from trusts is to the holders of the stock which they have issued. Our country is too great, capital is too abundant, and our people too enterprising to be ruined by trusts and combinations, however powerful. We are marching mightily forward in the industrial race. Along our course will appear the wrecks of some great combinations; for no great trusts can endure, unless they maintain fair prices and meet the competition of their rivals.

## HOW THE TARIFF AIDS THE TRUSTS.

BY CHARLES BEARDSLEY.

[Charles Beardsley, economist, graduated from Harvard university in 1892 and in 1897, became an instructor in economics in that institution; he is one of the best known of the younger economists and has written a great deal on economic topics, more especially the tariff and the currency; his investigations into the effect of the tariff on trusts have attracted wide attention from statesmen as well as economists; he is a contributor to the Quarterly Journal of Economics, from which the following article is taken by permission.] Copyright 1905 by George H. Ellis Company

When the tariff of 1890 was passed, there were comparatively few trusts in the manufacturing industries. The movement towards consolidation, which began in 1882 with the formation of the Standard Oil trust, had made little headway by 1890. The historic process of the concentration of industry in large establishments had, indeed, gone far; and the manufacturing industries were full of large establishments producing on a great scale. But, for the most part, these industries were still carried on under the conditions of competition, although competition among them was sometimes limited by crude efforts towards combination, by pools of various kinds, and agreements for the regulation of prices or the limitation of output. But, for the most part, the ownership and management of different concerns in the same trade remained in the hands of different firms and corporations. Within few of the manufacturing industries had there been organized those great industrial systems which are called trusts; few of them had reached the stage of centralized ownership and management. Those industries, however, in which combinations of a monopoly or quasi monopoly character were to be found in 1890 (if exposed even in a slight degree to foreign competition), together with other manufacturing industries, received the benefit of ample protection from the tariff act of that year. The following table enumerates some of the important trusts in the protected industries in 1890, and states the rates of duty imposed on some of their chief products of manufacture by the act of that year.

Since 1890, however, and especially during certain periods since the latter part of the year 1898, consolidation has gone



on with remarkable rapidity in the manufacturing industries. Some of these industries, at least for the time being, have come under the sway of almost complete monopolies. Others have

Trusts.	Duties imposed by the Act of 1890 on some main products of manufacture.
American Cotton Oil company	Cottonseed Oil, 10¢ per gal., of 7½ lbs. weight.
American Tobacco company	Cigarettes, \$4.50 per lb. + 25% ad valorem.
Distilling and Cattle Feeding company (Old Whiskey trust)	Brandy and Spirits distilled from grain not otherwise provided for, \$2.50 per gal.
Envelope trust	Paper envelopes, 25¢ per thousand.
National Lead trust	White lead, 3¢ per lb. Red lead, 3c per lb.
National Linseed Oil trust	Linseed or flaxseed oil, raw, boiled or oxidized, 32¢ per gal. of 7½ lbs weight.
National Starch Manufacturing company	Starch, 2¢ per lb.
Sugar trust	Refined sugar above No. 16 Dutch standard, $\frac{5}{16}$ ¢ per lb. + $\frac{1}{16}$ ¢ per lb. on sugar imported from countries paying an export bounty. Raw sugar free.

entered on what may be called the trust or quasi monopoly stage,—the stage where the predominant influence in the trade is that of a single large company producing the major portion of the output of the trade, and strong enough to regulate amount of product and, within certain limits, fix prices. Furthermore, in some industries important combinations have been formed, which enjoy a certain trade leadership, but are not strong enough to control output or fix prices. Still other industries have been largely concentrated in the hands of two or more rival combinations; and in either of these cases further and more complete consolidation may be regarded as possible or impending. Some, perhaps many, of the recently organized companies will be unsuccessful and of short duration in their present form. A few of them have already passed into the hands of receivers. But most of those which fail will probably sooner or later be reorganized or succeeded by fresh combinations. The progress of the movement may be temporarily checked by legislation or by decisions of the courts; but, broadly speaking, the consolidation of the distinctively machine industries should be regarded as an economic change which, when it is finished, will be permanent. The movement has been and is, one may think, inevitable; and, on the whole, and apart from certain of its accidents, should be welcomed as an important stage forward in the evolution of industry. But

the centralization of industry has altered the aspect of the tariff question, and added a new element to the problem of tariff legislation.

In the protected industries, among the important combinations which are said to control a very large part of the output in their respective trades, with the rates of duty on some of their chief products on manufacture under the tariff act of 1897, are those in the following table. The statistics are for the fiscal year ending June 30, 1900. Where the duties are specific, the ad valorem rate which would have been equivalent to the specific rate in the year of 1899-1890 is given in the third column of the table. The ad valorem rate is inserted to illustrate the substantial character of the protection which many trusts enjoy. The values of foreign products imported under the rates given indicate the effective and sometimes prohibitory character of those rates.

TRUSTS.	Tariff imposed by the Act of 1897 on some main products of manufacture.	Ad valorem rates. Per cent.	Values of foreign products imported into the United States during the fiscal year ending June 30, 1900.
American Bridge company	Iron and steel beams, girders, etc., 1½¢ per lb.	21.37	\$36,494.67
American Hide and Leather company	Upper leather, dressed and finished, 20% ad valorem. Calfskins, tanned or tanned and dressed, 20% ad valorem	20 20	635,365.00 119,154.50
American Linseed company	Linseed or flaxseed oil, raw, boiled or oxidized, 20¢ per gal. of 7½ lbs. weight	29.20	1,989.00
American Malting company	Barley malt, 45¢ per bush. of 34 lbs. weight.	49.43	3,536.00
American Radiator company	Manufactures of iron and steel not especially provided for, 45% ad valorem	45	
American Sheet Steel company	Common sheets of iron and steel, various specific rates according to value per lb.	45.43 (average)	33,006.50
American Smelting and Refining company	Lead in pigs, etc., 2½¢ per lb.	94.75	109,140.40
American Snuff company	Snuff and snuff flower, 55¢ per lb.	118.47	5,097.00
American Steel Hoop company	Hoop, Band, or scroll iron or steel not otherwise provided for, from ⅝¢ to ⅞¢ per lb.	28.57 (average)	9,305.00
American Steel and Wire company	Round iron or steel wire, various specific and ad valorem rates, according to size and value	40.22 (average)	174,816.00

TRUSTS.	Tariff imposed by the Act of 1897 on some main products of manufacture.	Ad valorem rates. Per cent.	Values of foreign products imported into the United States during the fiscal year ending June 30, 1900.
American Steel and Wire company	Wire nails not less than 1 inch in length, etc., $\frac{1}{2}\phi$ per lb.	13.43	\$1,348.93
American Sugar Refining company	Above No. 16 Dutch standard, and all sugar that has gone through a process of refin- ing, 1.95¢ per lb.	71.23	373,354.14
American Thread com- pany	Cotton thread on spools or reels, 6¢ per dozen	48.53	116,075.00
American Tin Plate com- pany	Tin plates, terne plates, and taggers tin, lighter than 63 lbs. per 100 sq. feet, $1\frac{1}{2}\phi$ per lb. All other, $1\frac{1}{2}\phi$ per lb.	46.89	4,391,800.00
American Tobacco com- pany	Cigarettes and paper cigars, in- cluding wrappers, \$4.50 per lb. and 25% ad valorem	39.18	203,332.17
American Window Glass company	Cylinder, crown, and common window glass, unpolished, various specific rates increas- ing with the dimensions of the glass from $1\frac{3}{8}\phi$ to $4\frac{3}{8}\phi$ per lb.	143.73	76,341.50
American Writing Paper company	Writing, letter paper, etc., weighing not less than 10 lbs. or more than 15 lbs. to the ream, not ruled, etc., 2¢ per lb. and 10 % ad valorem.	66.36 (average)	1,530,637.73
	The same, if ruled, etc., 2¢ per lb. and 20% ad valorem.	27.70	13,843.00
	Writing more than 15 lbs. to the ream, not ruled, etc., $3\frac{1}{2}\phi$ per lb. and 15% ad valorem.	43.68	214.80
	If ruled, etc., 3¢ per lb. and 25% ad valorem.	34.75	98,322.00
Continental Tobacco company (Plug tobac- co, etc.)	Manufactures of tobacco other than cigars, cigarettes, snuff and snuff flour, etc., 55¢ per lb.	35.66	2,700.00
Diamond Match com- pany	Matches, in boxes containing not more than 100 matches per box, gross, 8¢ per gross.	256.89	62,718.70
	Otherwise than in boxes as above, 1¢ per 1,000	32.79	94,680.00
Distilling Company of America	Spirits not especially provided for, manufactured or dis- tilled from grain, \$2.25 per proof gallon.	27.79	55,206.00
Glucose Sugar Refining company	Glucose or grape sugar, $1\frac{1}{2}$ per lb.	123.43	1,160,276.00
International Paper company.	Printing paper suitable for books and newspapers, var- ious specific and ad valorem rates according to value per lb.	61.65	1,214.00
International Silver company	Manufactures of silver not es- pecially provided for, 45% ad valorem	From 15 to 19.08	135,455.00
		45	112,469.81

TRUSTS.	Tariff imposed by the Act of 1897 on some main products of manufacture.	Ad valorem rates. Per cent.	Values of foreign products imported into the United States during the fiscal year ending June 30, 1900.
International Steam Pump company	Steam pumps, 45% ad valorem	45	
Mount Vernon Wood- berry Cotton Duck company	Cotton duck, 35% ad valorem	35	\$ 1,275.00
National Biscuit com- pany	Bread and buscuit, 20% ad va- lorem	20	98,887.71
	Carbons for electric lighting, 90¢ per 100	114.98	85,190.00
National Carbon	Carbon pots (porous) for elec- tric batteries without me- tallic connections, 20% ad valorem	20	14,762.00
National Glass company (Tableware glass.)	Common glass tumblers, 60% ad valorem	60	Slight im- portations.
National Lead company	White lead and white paint and pigment containing lead, etc., 2½¢ per lb.	49.47	32,470.00
	Red Lead, 2½¢ per lb.	68.94	31,392.00
National Salt company	Salt in bags, sacks, barrels, etc., 12¢ per 100 lbs.	37.68	383,064.08
	In bulk, 8 @ per 100 lbs.	89.09	161,080.54
	Used in curing fish, duty re- mitted		71,942.80
National Starch company	Starch, 1½¢ per lb.	73.69	204,656.90
National Tube company	Iron or steel tubes, pipes, etc., 2¢ per lb., or 35% ad valorem	34.58 (average)	62,175.91
Otis Elevator company	Passenger elevators (under the head of articles not specially provided for, composed wholly or in part of iron or steel) 45%	45	
Royal Baking Powder company	Baking powders, 20% ad va- lorem	20	Slight im- portations
Rubber Goods Manufac- turing company	Manufactures of gutta-percha, 35% ad valorem; of India rubber, 30% ad valorem	35 30	267,490.50 212,704.00
Union Bag and Paper company	Paper bags, 35% ad valorem	35	449,286.22 (total manu- facture of pa- per not spe- cially pro- vided for.)
United States Cast Iron Pipe and Foundry company	Cast-iron pipe, ¼¢ per lb.	15.36	2,440.00
United States Envelope company	Envelopes, bordered, etc., 35% ad valorem	35	1,471.00
	Plain envelopes, 20% ad va- lorem	20	4,459.50
United States Leather company	Band, belting, and sole leather, 20% ad valorem	20	49,216.75
United States Rubber company	Rubber boots and shoes, 44¢ per lb. and 60% ad valorem		Slight im- portations.



These are a very few important trusts which do not receive the benefit of protective duties under our tariff laws. Among them are the following:

TRUSTS.	Tariff imposed by the Act of 1897 on some main products of manufacture.	Ad valorem rates. Per cent.	Values of foreign products imported into the United States during the fiscal year ending June 30, 1900.
Amalgamated Copper company	Unmanufactured copper, free		\$15,107,713.98
American Agricultural Chemical company	Fertilizers, free		1,687,661.19
Standard Oil company	Petroleum, crude and refined, free		1,858.00

It is a striking and important fact that almost all trusts of national importance are to be found in the protected industries; but this fact should not be regarded as strange. For the design of the tariff system has been the promotion of manufacturing industry, and it is among the manufacturing industries that most of the larger trusts have been formed. But what is the significance of the fact that almost all the more important trusts are to be found in the protected industries?

There is obviously a point beyond which the control of a purely domestic combination in the manufacturing industries cannot extend. This is the importing point. A domestic monopoly cannot fix prices higher than those at which foreign made goods can be sold in the United States. The president of the American Sugar Refining company was once asked in the course of an official investigation, "The American Sugar Refining company is able to control the price of sugar sold in the United States, is it not?" The answer was, "No sir; up to the importing point it is." Under a regime of competition the limit of prices is the cost of production, but under a regime of monopoly it is the importing point of foreign made goods. In the protected industries the importing point depends on the tariff. If the tariff places the importing point high above the domestic cost of production, including a fair profit, a margin for the arbitrary raising of prices and for monopoly profits is created, of which strong combination may be able continuously or at intervals to take advantage. If a protective sys-

tem is to be maintained, therefore, the tariff should be used as an instrument for the protection of consumers. The object of tariff legislation should be to furnish adequate protection to such industries as require it, without providing the opportunity for monopoly abuses. This object is certainly not fully attained by the present tariff law, nor was it attained by the law of 1890 or the law of 1894.

There are, one may think, two simple principles which should guide the making of tariffs for the protection of industries which have been consolidated, or (to describe present conditions in the manufacturing industries in the United States) for the protection of a body of industries, in many of which combinations approaching the character of monopoly have been formed or may soon be formed.

First, the tariff on goods of any sort of which the cost of production, including a fair profit, is no higher in the United States than in foreign countries, should be little or nothing. In such cases any tariff is excessive, and favors the growth of monopoly abuses. Yet there is an important and increasing class of commodities upon which duties are still levied, which can be produced in the United States at a cost quite as low as in foreign countries. Most iron and steel products, for instance, although not quite all, can now be produced in great quantities as cheaply in this country as anywhere else in the world, if not more cheaply than anywhere else. Our imports of iron and steel have diminished, and our exports have increased, until our exports now far exceed our imports. But considerable duties are still imposed on iron and steel products. These duties were equivalent, on the average, for all iron and steel and manufactures of iron and steel imported in the fiscal year ending June 30, 1900, to an *ad valorem* rate of about 37 per cent. Although the iron and steel trade in all its branches has not thus far been completely consolidated, there is little doubt that by means of pools or working agreements the steel companies have been able in the past, at least so far as some steel products are concerned, to charge monopoly prices and make monopoly profits. The cotton industry, also, is perhaps approaching a stage where further protection will be unnecessary. The coarser grades of cotton goods can be pro-

duced as cheaply in the United States as anywhere else, if not more cheaply than anywhere else. For many years our exports of uncolored cotton cloths have been considerable, while our imports have been trifling. Yet there are still levied on unbleached and undyed cotton cloths tariffs ranging from one cent a yard upward, equivalent to ad valorem rates of about 20 per cent and upward. Mr. S. N. D. North told the industrial commission in 1899 that print cloths were sold for less than the duty imposed upon them. The paper industry, so far as some products are concerned, is another manufacturing industry which has been able in recent years to compete in the world market. Since 1897 our exports of paper have exceeded our imports. The various specific and ad valorem duties collected on imported paper manufactures were equivalent in the year 1899-1900, on the average, for printing paper to an ad valorem rate of over 15 per cent, and for all paper and manufactures of paper to an ad valorem rate of over 29 per cent.

The steel, cotton, and paper manufactures are examples of an important and increasing class of industries in the United States, which are largely independent of the tariff. Even if all protection were withdrawn from them, monopoly profits would not of necessity be beyond the reach of strong combinations controlling such industries. If the tariff were removed on certain goods, the United States would be joined to the world market so far as these goods were concerned, and the importing point would be lowered by the amount of the tariff. But the importing point might even then remain considerably above the domestic cost of production. For the domestic cost of production, owing possibly to the economies of production on a very large scale or to the closer proximity of domestic concerns to the sources of supply for the raw material of manufacture, as in the case of the flour milling trade or of the cotton manufacture, might be somewhat less than in foreign countries. In such cases, under a regime of active competition among domestic producers, the selling price of goods would conform to their domestic cost of production. But, under a regime of monopoly, the limit of prices is not the cost of production, but the importing point. And, if there is a margin between the domestic cost of production and the



importing point, an opportunity is provided for possible monopoly profits. Again, if the tariff having been removed, foreign producers could sell their goods in the seaboard markets at a price about equal to the domestic cost of production plus transportation from the nearest seat of domestic manufacture, monopoly prices would be impossible in seaboard markets. If German steel rails could be sold in New York as cheap as steel rails brought from Pittsburg, it would not follow that German steel rails could be sold in the territory about Chicago as cheap as steel rails made in Chicago. For a large manufacturing concern has a natural monopoly of the immediate surrounding territory when the cost of transporting its products is in proportion to their value. The cost of transportation, however, is not ordinarily an important element in the price paid by the consumer for the finer manufactures. So that in case of these industries in which the cost of production is as low in this country as elsewhere, or lower than elsewhere, the removal of the tariff might not make monopoly profits impossible. Yet it would narrow the margin between the importing point and the domestic cost of production very materially in most industries, and in many practically destroy it.

The second principle which should guide the making of tariffs for the protection of consolidated industries is this: The tariff on those commodities of which the cost of production is higher in this country than abroad should be about what is necessary to compensate domestic industries for their higher cost of production. The aim of tariff legislation for the protection of such industries should be to adjust the importing point of foreign goods to the level of the domestic cost of production, or, possibly, to place the importing point a little above that level.

Certainly, tariff changes should not be undertaken in a spirit of hostility to combinations as such or in order to crush out the trusts. Some combinations, as, for instance, those engaged in the manufacture of the finer grades of textile fabrics, or the combinations in the glass trade, might be materially injured or reduced to bankruptcy by ruthless tariff legislation, because the cost of manufacture for such products as theirs is greater in this country than abroad. Corporations like the



American Sugar Refining company, which consume dutiable raw materials in large quantities, are absolutely dependent on tariff legislation: for they must have a tariff on their manufactured products at least high enough to compensate them for the addition which the tariff makes to the cost of their raw materials. Combinations like the American Tobacco company and the distilling companies, the products of which are subject to an internal revenue tax, are in a similar position. So that, if tariff changes should be undertaken in a destructive spirit, much ruin might be worked. But the consolidation of an industry does not in itself furnish a reason for the complete withdrawal of protection from that industry. The demand for such ruthless legislation is an outgrowth of popular misunderstanding of the nature and significance of the important economic change which is taking place. This misunderstanding has given rise to much adverse but, on the whole ineffectual legislation: it is widespread, but is perhaps already diminishing. A strong centralized company is, indeed, somewhat less in need of protection, other things being equal, than an industry in which there are many competing concerns, because the capital is greater, and the expenses of production, owing to the economies of centralized management, are less. But, if a protective tariff is to be maintained at all, those industries in which the costs of production for any reason are higher in this country than abroad furnish its proper field. Tariffs for the protection of such industries should be sufficient to compensate domestic manufacturers for their higher costs of production, but not high enough to invite monopoly abuses.

Opinions will doubtless differ as to the extent of the opportunity for monopoly abuses created by tariff legislation since 1890, and especially by the tariff act of 1897. Most combinations have been formed so recently, and the affairs of most of them are conducted with such secrecy, that little can be accurately known about them. But, as Professor Jenks has shown, there can be no doubt that some combinations have been able to obtain monopoly prices, at least temporarily or from time to time. The American Sugar Refining company is the notorious example of the danger of over protection. Its profits have been large and its prices high: but the tariff on

refined sugar is almost prohibitory. Of sugar above No. 16 Dutch standard, and of refined sugar, there was imported into the United States during the fiscal year ending June 30, 1900, only 13,673,030 pounds, which was less than one per cent of the total importations of sugar, raw and refined. Another strong combination which has earned very large profits for a number of years, under favor of tariff legislation, is the American Tobacco company. This company has paid 8 per cent annually on its preferred stock since its organization in 1890, and on the average 10 per cent annually on its common stock. The common stock, which was originally somewhat larger in amount than the preferred, has recently been greatly increased; and on a stock dividend of 100 per cent has been distributed. It is expected to pay 6 per cent on this new basis. Originally, it was probably not less than two thirds water. The tariff on cigarettes and paper cigars, which are main products of the company, is \$4.50 a pound plus 25 per cent ad valorem. This was equivalent in the fiscal year 1899-1900 to a duty of over 143 per cent ad valorem, and is practically prohibitory, as is shown in Table II. The tariff is several times the wholesale or even the retail price of the more popular grade of cigarettes. A thousand cigarettes of a well known popular brand weigh over four pounds. The duty on such cigarettes would be over \$18 a thousand, but they are sold at retail for \$5 a thousand. The tariff on plug and smoking tobaccos, which are main products of the Continental Tobacco company (in which the American is said to have a preponderating interest), and on all other manufactured tobacco, except cigars, cigarettes, etc., is 55 cents a pound, which was equivalent, on the average, in the fiscal year 1899-1900 to over 256 per cent ad valorem. The wholesale price of a leading brand of smoking tobacco, including the internal revenue tax, was 35 cents a pound in 1899. The American Tin Plate company has been one of the strongest of the industrial monopolies. We are assured that the tin plate industry could not be carried on without the aid of the tariff, yet it has often been questioned whether the present tariff on tin plates is not exorbitant. The tariff of  $1\frac{1}{2}$  cents a pound was equivalent in 1899-1900 to from 39 to 46 per cent ad valorem, and is prohibitory so far as the great bulk of

the American market is concerned. The distilling combination receives the benefit of evidently excessive tariffs on some of its products. The tariff on spirits not specially provided for, manufactured or distilled from grain, is \$2.25 a proof gallon, and was equivalent in 1899-1900 to over 123 per cent ad valorem on the average. The price of proof spirits in 1899, including the internal revenue tax, was about \$1.25 per gallon.

Although there has never been any justification for plainly excessive tariffs, the consolidation of industry has greatly increased the danger which attends them. Partly because, until very recently, combinations of monopoly character have been exceptional in the protected industries, tariff schedules have not been framed with a distinct purpose to prevent monopoly abuses. Tariffs have been levied hitherto mainly for the protection of industries regarded as under a regime of competition, industries in which there were a number of concerns with diverse interests; and the competition among these concerns has been relied on, and not without some reason, to prevent exorbitant profits. The danger of high prohibitory duties has not been regarded as great and has not been guarded against.

The removal or reduction of tariff duties, however, should not be regarded as the complete or final solution of the trust problem, but as a means by which, for the present, most combinations in the manufacturing industries may be held in check. I say for the present, because international competition might sooner or later lead to international combinations. Foreign competition would hinder the abuses of monopoly only so long as combinations remained within national lines. National jealousies, differences of race, language, and methods of business, and political complications are now, and would be under any conditions, great difficulties in the way of international combinations. Within the field of the protected industries, however, foreign competition would have this advantage as an agency for the regulation of monopolies: it could be brought to bear quickly and effectively. Some other methods which have been proposed for the control of monopolies, such as the compulsory publicity of accounts or regulation by means of a commission or commissions like



the Interstate Commerce commission, although perhaps advisable as steps in the working out of a permanent or general solution of the monopoly problem, could hardly be expected to become easily or quickly effective. We have been told that a constitutional amendment is needed before a national incorporation law, which would bring industrial companies more completely under the control of the national government, could be enacted and enforced. In the meantime foreign competition, if allowed to operate, would do much to prevent or correct monopoly abuses within the large and very important field of the protected industries.

To summarize the argument which has been attempted: The rapid progress of consolidation among the protected industries, among which the great majority of trusts of national importance are to be found, has altered the aspect of the tariff question, and made a reconsideration of that question necessary. The tariff question is becoming more and more a question as to the principles which should guide the making of tariffs for the protection of consolidated industries. Under a regime of competition the normal limit of prices is the cost of production, but under a regime of monopoly it is the importing point. If the protective system is to be continued, the object of tariff legislation should be to furnish adequate protection to such industries as require it, without providing the opportunity for monopoly abuses. Therefore, in the first place there should be no tariff on goods of any sort of which the cost of production is no higher in the United States than in foreign countries. An important class of goods of this kind, including most iron and steel products and the cheaper grades of cotton goods, are however subject to considerable duties under the present tariff law. These duties are unnecessary, and only provide the opportunity for monopoly prices and profits. In the second place the tariff on goods of which the cost of production is higher in this country than abroad should be about what is necessary to compensate domestic industries for their higher cost of production. Many industries producing such goods might be materially injured or perhaps destroyed by tariff changes undertaken in a destructive spirit. But the consolidation of an industry is no reason in



itself for the withdrawal of all protection from that industry. The importing point of cheaply produced foreign goods should be adjusted approximately to the level of the domestic cost of production, in order to protect domestic manufacture and at the same time prevent monopoly abuses. Opinions will doubtless differ as to how far the present tariff rates for the protection of these industries should be regarded as excessive. But there can be no doubt that the present rates are excessive in some cases. It is not unnatural that legislators in framing tariff schedules should have been hitherto somewhat unconcerned as to the danger of excessive tariffs: for, not without some reason, they have relied on domestic competition to prevent monopoly abuses. But the consolidation of industry has made excessive tariffs dangerous. Yet the abolition or reduction of tariffs should not be regarded as the adequate or final solution of the trust problem, but as a means by which most combinations in the manufacturing industries may be held in check, so long as the consolidation of industry does not extend beyond national boundaries. And foreign competition has this great advantage as an agency for the correction of monopoly abuses,—that it may be brought to bear quickly. The adjustment of tariffs in accordance with the principles which have been suggested probably would not lead to the invasion of the American market on a large scale by foreign producers. The possibility of such an invasion, in case unreasonable prices should be charged by domestic combination, would go far to prevent such prices.

## EXPANSION THROUGH RECIPROCITY.

BY JOHN BALL OSBORNE,

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The name and fame of the lamented President McKinley will be identified in American history with the policy of reciprocity, which never had an abler and more sincere advocate. To the very last he remained an unflinching sponsor of the treaties made under his direction, and in his last annual message to congress (December 3, 1900) he said of them:

"The failure of action by the senate, at its last session, upon the commercial conventions then submitted for its consideration and approval, although caused by the great pressure of other legislative business, has caused much disappointment to the agricultural and industrial interests of the country, which hoped to profit by their provisions. . . .

"The policy of reciprocity so manifestly rests upon the principles of international equity, and has been so repeatedly approved by the people of the United States, that there ought to be no hesitation in either branch of the congress in giving to it full effect."

There is an element of the pathetic in these words of gentle reproach. Even in his brief second inaugural address (March 4, 1901) Mr. McKinley made passing mention of this subject, so important, in his judgment, for the maintenance of our prosperity, saying:

"Now every avenue of production is crowded with activity, labor is well employed, and American products find good markets at home and abroad.

"Our diversified productions, however, are increasing in such unprecedented volume as to admonish us of the necessity

of still further enlarging our foreign markets by broader commercial relations. For this purpose reciprocal trade arrangements with other nations should in liberal spirit be carefully cultivated and promoted."

But it was in his farewell words to the American people, in his masterly speech at Buffalo, delivered on the eve of his martyrdom, that President McKinley gave the fullest expression to the results of his four years of deliberation on the subject of reciprocity. This is what he said:

"By sensible trade arrangements which will not interrupt our home production, we shall extend the outlets for our increasing surplus. A system which provides a mutual exchange of commodities is manifestly essential to the continued and healthful growth of our export trade. We must not repose in fancied security that we can forever sell everything, and buy but little or nothing. If such a thing were possible, it would not be best for us or for those with whom we deal. We should take from our customers such of their products as we can use without harm to our industries and labor. Reciprocity is the natural outgrowth of our wonderful industrial development under the domestic policy now firmly established. What we produce beyond our domestic consumption must have a vent abroad. The excess must be relieved through a foreign outlet, and we should sell everywhere we can, and buy wherever the buying will enlarge our sales and productions, and thereby make a greater demand for home labor.

"The period of exclusiveness is past. The expansion of our trade and commerce is the pressing problem. Commerce wars are unprofitable. A policy of good will and friendly trade relations will prevent reprisals. Reciprocity treaties are in harmony with the spirit of the times; measures of retaliation are not.

"If, perchance, some of our tariffs are no longer needed for revenue or to encourage and protect our industries at home, why should they not be employed to extend and promote our markets abroad?"

Representative Babcock, of Wisconsin, a republican member of the committee on ways and means, introduced in

the fifty-sixth congress a bill providing for placing upon the free list all manufactures of iron and steel imported from abroad, the like of which are made in the United States by a "trust," without attempting to define what is a trust. A far more radical scheme of revision has been discussed extensively in the press. It has been proposed to place either on the free list or on an exclusively revenue producing basis all articles, now dutiable, which were formerly largely imported, but are now produced in this country and exported and sold abroad, under conditions of free competition. In other words, the mere fact of the exportation and sale in a foreign market of a given article of American manufacture shall be accepted as proof that the said article no longer stands in need of any protection by the United States tariff laws. This test of the efficiency and necessity of protective duties would be manifestly inadequate and unfair to many domestic industries that are struggling, against heavy odds, to place their surplus products in foreign markets, and must rely on absolutely stable conditions in the home market. It must be remembered that much of our export trade is still in the experimental stage, and that many manufacturers are making considerable sacrifices in order to find new outlets abroad for their goods. We have only to consult the formidable list of articles of American manufacture which have, in recent years, come within the scope of such a test, to realize the far reaching application of the plan. It would involve a complete reversal of the economic policy of the government, and constitute virtual free trade. The industrial stagnation prevailing under the Wilson tariff is only one indication of the disastrous conditions which would surely follow a change of policy of that character.

Moreover, such a scheme of tariff revision would involve the sacrifice of an unknown amount of needed revenue. This release of revenue would be a sheer gift on the part of the United States at the expense of American producers. It is all very well to allege that a remission of duties by the government is simply a forbearance in the taxing of American consumers, but the fact remains that the principal beneficiaries in the transaction would be the European manufacturers, whose sales would be enlarged and profits swelled in Ameri-



can markets. It is surely idle to assert that the American people who emphatically voiced the merits of the protective tariff system in their electoral verdict of 1896, in 1900, and again, at their very last opportunity, in 1904, are now prepared to sanction a desertion of that policy in the midst of an era of unexampled national prosperity.

Let us now consider the other remedy. Reciprocity is an international commercial bargain, wherein the interested governments make mutual and equivalent concessions in their respective customs duties on particular articles of merchandise. It has been suggested that this might be effected by concurrent legislation in the respective countries, but that method is practically impossible. In the first place, it presents the weakness of instability. Take, for example, the acts of our own legislative branch. One congress, whose life is only two years, cannot bind its successors in general legislation, and hence no one can accurately foretell the duration of a tariff act. But a treaty, made for a definite term of years, affords satisfactory security to its beneficiaries, inasmuch as it is a solemn compact between nations, which neither contracting party can afford to violate in this age of enlightenment. Secondly, in addition to the question of security, diplomacy is better adapted than the legislature to the adjustment of the precise terms and conditions of a well balanced international arrangement in commercial reciprocity. It is, therefore, to the treaty making power that we must resort for the practical application of the principle of reciprocity in tariffs.

The famous Marcy-Elgin treaty of 1854 with Great Britain on behalf of Canada stands as the first example of our adoption of the reciprocity principle in the modern sense. It provided for the mutual exemption from duty of an important list (identical on both sides) of natural products of the farm, forest, mine, quarry, and sea. It went into operation in 1855, and remained in force for eleven years; being abrogated by act of congress, and terminating on March 17, 1866.

The treaty of 1875 with the Hawaiian islands established virtual free trade in the commercial relations of the two

countries; tropical or subtropical articles being exempted from duty on the one side, and an important list of miscellaneous products on the other. This treaty possessed an exceptional political significance in virtue of the geographic and intimate historical relations of the contracting parties, which foreshadowed, since an early date, the ultimate annexation of the islands by their powerful protector against foreign aggression. It was renewed in 1884, with the addition of an important concession to the United States of the exclusive use of Pearl harbor for a naval station, and was still in force when the annexation was accomplished. In fact, the customs provisions of the treaty continued in operation until the passage of the act of congress of April 30, 1900.

Of the several unperfected treaties of reciprocity negotiated on the part of the United States, the administration of President Arthur furnished no less than three, namely, the Grant-Trescott treaty of 1883 with Mexico, the Foster treaty of 1884 with Spain on behalf of Cuba and Porto Rico, and the Frelinghuysen treaty of 1884 with the Dominican republic. The last two failed of ratification by the senate, and were withdrawn by President Cleveland in March, 1885; and the first, although duly ratified, never went into effect, for want of the stipulated legislation by congress. In one sense, however, the rejected Mexican treaty was actually a "perfected" treaty, and hence is included in the official compilation of United States treaties.

In the popular mind the reciprocity of the Harrison administration still looms up conspicuously. The McKinley tariff act of 1890 contained in its third section the first instance of the incorporation of the reciprocity principle in tariff legislation, and this was done on the advice of Secretary of State Blaine. But it was reciprocity only by a curious indirection, for the act contained no reference to diplomatic negotiations, except the statement that the object was "to secure reciprocal trade." The free list of the law embraced the items of sugar, molasses, coffee, tea, and hides. The so-called reciprocity section simply empowered the president, whenever satisfied that any foreign government producing and exporting the articles mentioned was imposing

unequal and unreasonable duties on American products, to suspend the free introduction of the same, and thereupon the said articles should be subjected, on entry, to the payment of certain duties specified therein. Thus the threat of retaliatory action was the effective leverage of the reciprocity movement that followed. Reciprocal arrangements were negotiated in 1891-92, under this provision, by Secretary Blaine and General Foster, with Germany, Austria-Hungary, France (never proclaimed), Brazil, British West Indies and Guiana, Cuba, and Porto Rico, Dominican republic, and four countries of Central America. They were in no sense "treaties," but simply reciprocal agreements which were arranged by the exchange of diplomatic notes, and became effective on presidential proclamation, without reference to the senate.

These arrangements, which have justly enhanced the fame of Mr. Blaine, were in operation only two or three years, when they were all unceremoniously abrogated by the Wilson law of 1894, to the dismay and detriment of our exporters, and to the extreme disgust of the interested foreign governments. But even in that short period they exercised a remarkable influence in the development of the foreign trade of the United States in the countries with which they had been concluded. Their beneficial effect was especially noticeable in the increase of our flour exports to Brazil and Cuba.

The republican party having, in its national platform of 1896, pledged itself to re-establish reciprocity equally with protection, and the president and a republican congress having been elected on that platform, the framers of the tariff act of July 24, 1897, very properly incorporated in it provisions for carrying out the policy of reciprocity. These provisions are contained in Sections 3 and 4.

The third section authorizes the president to enter into negotiations with any country exporting to the United States any of certain enumerated articles,—argols, wines, spirits, and works of art,—and, in exchange for reciprocal and equivalent concessions, to suspend by proclamation the existing duties on the said products imported from the country in



question, which shall thereupon be entitled to admission at reduced rates specified therein. This is, of course, limited in scope, and applicable to only a few countries of Europe, because of the character of the foreign merchandise subject to reductions. The reciprocal agreements under this section which have been concluded, in the form of conventions duly signed by the respective plenipotentiaries, like the Blaine arrangements, went into effect upon proclamation by the president, and are now working satisfactorily. In each instance a full equivalent of commercial advantages has been secured by the United States.

But it was Section 4 of the Dingley law that was the real legislative expression of the republican pledge of reciprocity. It empowered the president to negotiate reciprocity treaties which might provide, during a period not to exceed five years, for concessions, on the following bases, to the contracting nation, in exchange for equivalent advantages secured to the export interests of the United States:

(1.) Reduction of the existing duty upon any article imported from any country, to the extent of not more than 20 per cent.

(2.) Transfer from the dutiable to the free list of any article that is a natural product of any foreign country, and, at the same time, not a natural product of the United States.

(3.) Guarantee of retention on the free list of any article now free.

The pledge of protection was faithfully executed by congress in the schedules of import duties contained in the first section of the Dingley tariff, while simply the means of carrying out the equally meritorious pledge of reciprocity was provided in Section 4. The former section conserves and defends the home market for American industries, and safeguards the wages and tenure of employment of American labor, while the latter was intended to afford protection and security in foreign markets to our growing export interests, as well as to enlarge the field of their operations. There is no conflict whatever in the objects of these two sections, but rather an admirable harmony. The explanation is simple. When the rates of duty enumerated in the first section were being



formulated, it was clearly understood by the framers of the law and by the interested manufacturers that each and every rate was subject to reduction to the extent of one-fifth, under the operation of the reciprocity section. The rates were consequently made one-fifth higher than would otherwise have been justified. If the present rates on highly protected articles are reduced by 20 per cent, and the results compared with the corresponding rates of the McKinley tariff of 1890, it will be found that in every instance an ample measure of protection is left to the article, often higher than the duty under the high tariff of 1890. Reciprocity under the Dingley law is, therefore, not in any sense an abandonment of the protective system; nor can it properly be said to be a step in the direction of free trade. It makes for freer, fairer, and larger trade, but is utterly inconsistent with the economic policy commonly denominated "free trade."

It will thus be seen that, in Section 4, the tariff law contained a provision for self-revision within limits that are entirely rational. In fact, the natural inference is that many of the present duties are needlessly excessive, and ought to be reduced to the point contemplated by the framers of Section 4, who, as a matter of fact, were the framers of the entire act. Indeed, it is perfectly consistent to entertain this view, and still hold to the conviction that any more radical reduction in the existing rates, at this time, would be inopportune and fraught with danger to domestic industries.

Considered purely as an agency in the amelioration of possibly excessive duties, reciprocity is infinitely superior to the plan of the tariff revisionists. But when we come to consider the real object of the policy—the expansion of our foreign trade—no comparison is possible. One contemplates a national sacrifice in revenue, without the slightest assured return, but with a prospect of serious injury to home interests; the other secures positive advantages to our export interests, without menacing the integrity of the national policy which is the basis of the existing prosperity. Indeed, our export interests are also our home interests, and protection of the former is equally protection of the latter, inasmuch as wider markets abroad create a greater demand for American

labor and keep our industrial wheels going. A horizontal reduction of 20 per cent in the tariff by simple act of congress would constitute a national extravagance, whereas the same reduction through the agency of reciprocity would prove a valuable national investment.

Soon after the passage of the Dingley law, President McKinley appointed Hon. John A. Kasson, of Iowa, special commissioner plenipotentiary to represent him in the negotiations with foreign governments prescribed by the third and fourth sections. Commissioner Kasson was admirably qualified for this responsible and difficult service by a long and brilliant diplomatic and congressional experience. The negotiations were conducted simultaneously with several governments of Europe and of this hemisphere. In order to secure in each instance the greatest possible commercial advantages on the most favorable terms, the commissioner plenipotentiary applied himself to the careful study of home and foreign tariffs as well as of the official statistics of the international commercial movement; investigating the needs of our foreign commerce; cautiously considering the effect of each proposed reduction in duty; weighing the relative value of the total concessions on each side, with proper allowance for the character of the respective national tariffs, seeking and receiving the expert advice of influential chambers of commerce, boards of trade, and other commercial organizations, as well as of manufacturers and exporters in various sections of the United States; and giving personal attention to the representations of senators and representatives respecting the business interests of their constituents likely to be affected in any way by the proposed treaties. The fact that the negotiations were in progress was heralded broadcast, and every manufacturer and merchant in the land was given the fullest opportunity to present his views. Many did so before the treaties went to the senate, but the few manufacturing interests which most conspicuously protested against certain provisions of the completed treaties remained silent and apparently indifferent until after their transmission to the senate. On the other hand, some important interests expressed by letters to the commissioner their acceptance of

the reductions made in the treaties upon their branch of manufacture.

In his official labors, the commissioner constantly received the able and hearty co-operation of the secretary of state in diplomatic matters, and the advice of the secretary of the treasury in questions of national finance. President McKinley himself manifested a deep concern in the success of the negotiations, and gave his personal approval to all the Kasson treaties.

Besides the reciprocal agreements under Section 3, already mentioned, the substantial results of the work of the reciprocity commission are shown in the following list of eleven treaties transmitted to the senate by the president:

#### THE KASSON TREATIES.

Country.	Concluded.
FRANCE . . . . .	July 24, 1899.
GREAT BRITAIN for	
Barbados . . . . .	June 16, 1899.
British Guiana . . . . .	July 18, 1899.
Turks and Caicos Islands . . . . .	July 21, 1899.
Jamaica . . . . .	July 22, 1899.
Bermuda . . . . .	July 24, 1899.
ARGENTINE REPUBLIC . . . . .	July 10, 1899.
DENMARK for	
St. Croix . . . . .	June 5, 1900.
ECUADOR . . . . .	July 10, 1900.
NICARAGUA . . . . .	October 20, 1899.
DOMINICAN REPUBLIC . . . . .	June 25, 1900.

The first seven conventions in the foregoing list were transmitted to the senate at the first session of the fifty-sixth congress, and their contents made public; the other four were submitted at the second session of the same congress.

As the conventional periods for their ratification expired additional articles extending the time were signed, as necessity arose, in the attempt to keep the treaties alive till congress should pass upon them, but without success.

After several such extensions of the respective periods for the exchange of ratifications, the several treaties were allowed to lapse.

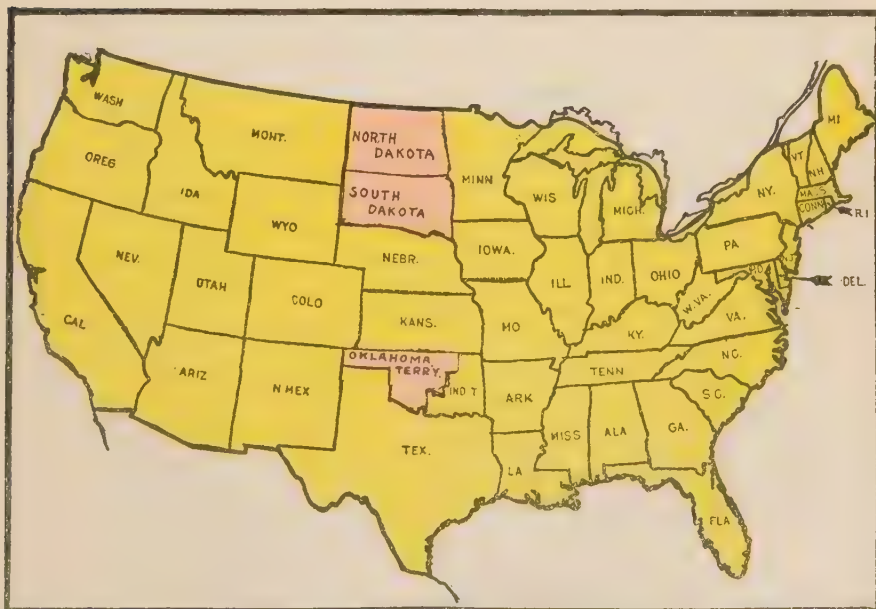








NO. 33.—1868. WYOMING TERRITORY FORMED FROM EASTERN PART OF TERRITORY OF IDAHO.



NO. 34.—1889-1890. DAKOTA TERRITORY DIVIDED AND STATES OF NORTH AND SOUTH DAKOTA ADMITTED (1889). OKLAHOMA TERRITORY FORMED (1890) FROM PART OF INDIAN TERRITORY AND UNORGANIZED TERRITORY NORTH OF TEXAS.



It is true that the senate was unusually occupied with important legislative business after the reciprocity treaties were received, but it is well known that the strong opposition which developed to certain features of the French, Jamaican, and Argentine treaties was the principal cause of senatorial non-action.

The reciprocity treaty with France was opposed because it provided for the reduction of the present average ad valorem duty on French cotton knit goods from  $64\frac{2}{10}$  per cent to  $51\frac{5}{10}$  per cent; on imitation jewelry from 60 per cent to 57 per cent; on spectacles from  $79\frac{8}{10}$  per cent to  $71\frac{8}{10}$  per cent; and on perfumes from  $67\frac{7}{10}$  per cent to 61 per cent. There were a few other protesting industries,—certain manufactures of brushes, tiles, braids, and gas and electric fixtures,—and that was the extent of the opposition. The great majority of American producers were emphatically in favor of the adoption of the treaty.

If the concessional rates above mentioned are compared with the corresponding duties of the McKinley tariff, which was enacted at a period when the industries in question were in greater need of governmental assistance, it will be seen that the French treaty would in no way have menaced the principle of protection. For example, the treaty would have left the duty on imitation jewelry at 57 per cent ad valorem, although under the McKinley law it was only 50 per cent ad valorem. The American negotiator confined the United States concessions in duty to 126 of the 463 numbers comprising the dutiable list of the Dingley tariff, although absolutely unrestricted in this respect by Section 4; and although authorized to concede in every instance a remission of 20 per cent of the duty, he granted the full reduction on only eight articles of French merchandise. The average of all the reductions proposed on the part of the United States is actually only  $6\frac{8}{10}$  per cent, notwithstanding it might have been 20 per cent and still be in perfect conformity with congressional authorization. Surely this was extremely conservative action on the part of the executive.

On the other hand, the great value of the French concessions to the United States is appreciated only by those



American manufacturers who, in recent years, have attempted to gain a foothold for their surplus products in the markets of France, in competition with the products of English, German, Belgian, and Swiss rivals. The difficulty is that, with the single exception of Portugal, every commercial nation of Europe enjoys in France the benefit of her minimum, or conventional, tariff on imports, while the products of the United States are subjected to payment of the maximum rates of her general tariff. Reduced to an ad valorem basis, the difference between the two tariffs, so far as American products are concerned, averages about 48 per cent (excluding mineral and vegetable oils, 26 per cent). Many of our manufacturers engaged in foreign trade are effectually barred from the French market by this discrimination in rates, and those who have managed to effect an entrance are contending under difficulties.

The opposition to the ratification of the reciprocity treaty with Jamaica came from the fruit growers of California, who complained because it made a reduction of 20 per cent in the duty on citrus fruits imported from that island. The duty is one cent per pound, and hence, under the treaty, would have been four-fifths of a cent. In view of the facts that the season of importation of the Jamaican fruit is only partially coincident with the market season of the California product, and that already about 98 per cent of the entire crop of Jamaican oranges is sold in the United States, there would seem to have been small ground for apprehension of increased competition, and no danger whatever of real injury to domestic interests.

But, considering the colonial concessions, even a cursory examination of the treaty will show that it was highly favorable to the United States. Jamaica agreed to admit free of duty no less than fifty-nine classes of United States merchandise, mostly important articles of manufacture, and also guaranteed specified reduced rates on another list of agricultural products.

The reciprocity treaty with the Argentine republic was strictly not one of the Kasson treaties, having been negotiated and signed at Buenos Ayres by the United States

minister to Argentina. It was attacked by the wool growers of the United States because it provided for a reduction of 20 per cent in the duties on Argentine wools. It is often asserted that the wool tariff is the keystone of the arch of protection, and certainly the storm of abuse which the proposed concession brought down upon the treaty lends some color to the statement. If the treaty had gone into operation, the rate on Argentine wools of Class I. would have been reduced from 11 to  $8\frac{8}{10}$  cents per pound, and on those of Class III. from 4 and 7 to  $3\frac{2}{10}$  and  $5\frac{6}{10}$  cents per pound respectively,—and, they tell us, the arch would thereupon fall. The Argentine government made this concession a *sine qua non*; and, after all, it only emphasizes what President Arthur's commissioners to Central and South America discovered so long ago as 1885, namely, that Argentina and Chili will not even discuss the subject of reciprocity with the United States unless their wools enter generously into the bargain.

Aside, however, from this single vulnerable feature, the treaty with Argentina was admirably drawn to develop and safeguard the export trade of the United States; substantial reductions in the present Argentine duties on our lumber, cereal foods, cotton seed oil, and certain other products being provided for.

As respects the eight other reciprocity treaties, they were all carefully framed to stimulate, develop, and protect the foreign trade of the United States in particular markets, and if put into effect would have demonstrated their merits within the short period of four and five years specified for their duration. The United States concessions on dutiable articles are confined to three or four natural products, such as sugar and fresh vegetables. In the case of the British and Danish colonies and the Dominican republic the reduction of duty contemplated on sugar was only  $12\frac{1}{2}$  per cent. Reciprocally, we secured for the principal products of our soil and industry either entire exemption from import duty or its substantial reduction, exemption from all extra charges (often vexatious and burdensome), and guaranteed of the lowest rates of duty granted to the like products of any country. These treaties, however, were never subjected to any special

criticism; why, then, would the storm raised by French cotton knit goods and Jamaican oranges and Argentine wool have prejudiced them?

An absurd charge against the treaties was that they were not negotiated on the true principle of reciprocity, which the objectors define to be the exchange on favorable terms of "dissimilar and non-competing products." In theory this may appear an ideal basis of commercial reciprocity, but among civilized and progressive nations it is impracticable. But this charge is really a criticism of the Dingley tariff, for, as has been shown, congress had no intention of restricting negotiations for reciprocity to any such narrow basis. In view of the extensive industrial development of the United States, there are practically no non-competing foreign manufactures. This element being eliminated, the suggested basis is confined to crude products of the soil. In fact, one of the provisions of Section 4 was that natural products of foreign countries which are not also produced in the United States may be transferred in reciprocity from the dutiable to the free list. But what are they? In the early history of the country it might have been quite practicable to confine the operations of reciprocity to this basis, but congress has been so extravagantly generous in placing such articles on the free list, that were dutiable non-competing products to constitute the extent of our available assets in negotiations, the keenest diplomacy of the United States would find its task more difficult than was the manufacture of bricks without straw to the Israelites. Adding to the producing capacity of the United States that of its outlying possessions—Hawaii, Porto Rico, and the Philippines—there is absolutely nothing left for the operation of that kind of reciprocity which is limited to tariff concessions on "articles which we need, but do not produce."

Another indefinite assertion designed to throw discredit on the treaties, which gained unworthy currency, was that they were negotiated under conditions which afterward changed, and that better bargains might later have been secured by the United States. This is not a fact. Some conditions may have partially changed, but they have inva-



riably tended to become more difficult as a basis for successful reciprocity; so that, had the treaties been formally rejected and negotiations begun afresh a year or two later, it is extremely doubtful whether the United States could again have secured equally favorable terms.

Within recent years two or three distinguished senators have contended that all reciprocity treaties are at variance with the most favored nation clause contained in the majority of our treaties of commerce and navigation with foreign powers. They maintain that, under a proper construction of the said stipulations, the United States would, on demand, be obliged to extend to the signatory governments, immediately and without special compensation, any and all concessions this government grants to a particular country in a treaty of reciprocity. If this view were correct, it would, indeed, be a serious menace to the policy of reciprocity. Fortunately, however, the position uniformly taken by the executive branch of the government of the United States, since the time of John Quincy Adams, is that commercial concessions granted in reciprocity by this government to another in exchange for an expressed equivalent cannot be lawfully claimed by a third nation without like compensation.

The soundness of this construction is clearly demonstrated by Hon. John A. Kasson. Referring to the language of the most favored nation clause in the principal commercial treaties of the United States, he writes:

“It is clearly evident that the object sought in all the varying forms of expression is equality of international treatment—protection against the willful preference of the commercial interests of one nation over another. But the allowance of the same privileges and the same sacrifice of revenue duties, to a nation which makes no compensation, that had been conceded to another nation for an adequate compensation, instead of maintaining, destroys that equality of market privileges which the ‘most favored nation’ clause was intended to secure. It concedes for nothing to one friendly nation what the other gets only for a price. It would thus become the source of international inequality, and provoke international hostility.”



This view is supported by many precedents quoted by Mr. Kasson, and by a decision of the Supreme court of the United States in 1887, in the case of *Bartram et al. vs. Robertson*, 122 U. S. Reps. p. 116, affirmed in *Whitney vs. Robertson*, 124 U. S. Reps. p. 190.

It is the function of reciprocity not only to improve present tariff conditions in foreign countries for the benefit of our exporting interests, but to establish effectual guarantees against worse conditions. Perhaps, indeed, this is the most important phase of the whole subject. The governments of several great commercial powers of Europe have recently revised their customs tariffs by increasing duties in large measure.

It requires no great political sagacity to perceive that what is termed the "American commercial invasion" of Europe, added to the ultra protectionism of the Dingley tariff, has aroused a feeling of strong resentment and a spirit of retaliation in the invaded territory. We read much about the threatened official combination of European nations against the commercial interests of the United States, on the lines of the scheme proposed in 1897 by Count Goluchowski, premier of Austria-Hungary. Although this peril to American commerce may be somewhat exaggerated by some writers, in view of the improbability of any basis of united official action being attained by rival European powers, there is, nevertheless, ample justification for serious apprehension of separate action on their part against our interests. An official coalition would be difficult, but the real danger is that, provoked by the same transoceanic conditions and acting independently, the principal nations of Europe may enact inimical and highly discriminating tariffs against the United States, to the incalculable injury of American commerce. Germany, in her suspended tariff of December 25, 1902, wields a weapon of formidable strength. It has been announced that it will go into effect on March 1, 1906, and be applied to all non-treaty countries. But, based upon it, a new conventional tariff has been created by the conclusion of reciprocity treaties between the imperial government and seven countries of Europe, viz.: Austria-Hungary, Russia,

Italy, Switzerland, Belgium, Servia, and Roumania, which conventions will become effective simultaneously with the new tariff and supersede the existing Caprivi treaties with the same powers. At the present time all American exports to Germany are received upon the footing of the most favored nation, in virtue of the provisions of the German-American commercial agreement of 1900, which specifies the Caprivi treaties. It is understood that Germany will decline to extend the benefits of that agreement to the revised conventional tariff which will become operative in March, 1906. It will, therefore, become necessary to reach a new understanding with Germany before that date, in order to avoid the application to American products of the high rates of the German tariff of 1902.

I have already referred to the case of France, where our manufacturers and producers are obliged to contend against the serious handicap presented by the high maximum tariff duties, while their foreign competitors in the same market enjoy the benefits of the minimum tariff.

The retaliatory action of Russia in 1901 in withdrawing from our manufactures the benefit of the minimum rates of her conventional tariff, and subjecting them to the almost prohibitory duties of her general tariff, has already resulted in a considerable loss to our producers.

Since 1900 Switzerland has pursued a like course, withholding, for the first time, from American goods the benefits of her conventional tariff.

Since 1898 Spain has augmented her maximum tariff and applied it in all its rigor to our products.

Similar commercial reprisals are to be feared in other quarters unless the Dingley tariff is modified by the equity of reciprocity.

Reciprocity is, therefore, the only safeguard against a war of retaliatory tariffs, destructive to commerce and prejudicial to international comity.

## AMERICAN POLITICAL POLICIES.

BY CHARLES W. FAIRBANKS.

[Charles Warren Fairbanks, vice-president of the United States; born May 11, 1852, in Union county, Ohio; was graduated from Ohio Wesleyan university in 1872, and two years later was admitted to the Ohio bar, when he began to practice in Indianapolis; in 1898, was member Joint High British-American commission and chairman American commissioners; senator from Indiana, 1897-04; elected vice-president of the United States, 1904.]

We have sought to build up the home market first and thereafter secure a fair share of the markets abroad. We have believed that in order to command foreign markets we must have strength enough to control our own. We have worked from the center outward, contrary to the policy of those who antagonize the protective system.

The development of our domestic market since the beginning of Mr. Lincoln's first administration now has been so stupendous as to defy accurate computation. No one can adequately comprehend its vast magnitude. We have witnessed its rapid increase under the stimulating effect of the protective policy enunciated in the platform adopted at Chicago forty-four years ago. We have seen the value of all manufactures in the United States increase from less than \$2,000,000,000 to more than \$13,000,000,000 in the thirty years preceding the last national census. We have observed our total manufactures rise until it is but little less than the manufactures of the United Kingdom, Germany and France combined. We have witnessed the transfer of industries from foreign countries to our shores; we have noted the immigration of countless thousands from foreign industrial centers to industries erected in our own country. We have seen them renounce their allegiance to alien governments and become American citizens, because our policies opened to them new and promising fields of opportunity.

We have never been indifferent to possessing in the fullest possible degree our share of the markets of other

countries. We were never in better position to push our peaceful commercial conquests to the uttermost parts of the earth than we are to-day. With one hand we safeguard the domestic market—more essential to us than all others—and with the other we reach out for those which lie beyond our borders. This is predicated upon sound national policy, upon considerations of the highest national interest. It may be said by some to be a selfish policy. It is, however, only that enlightening selfishness which is the inspiration of trade and commerce.

The expansion of our foreign commerce under republican policies and republican administration is conclusive evidence of the fact that the republican policies are not restrictive so far as our foreign trade is concerned. In 1860 our exports of manufactured products to other countries amounted to only \$102,000,000, and we have seen them reach the enormous sum of \$452,000,000.

We have been rapidly increasing our wealth through our foreign commerce. The balance of trade is greatly in our favor, and if we but adhere to the policies and uphold the administration which have so splendidly served us in the past, the golden currents from all the ports of the earth will continue to flow hither in a large if not increasing degree. Our foreign trade balance constitutes a record without parallel in our own history or in the history of any country of which we have knowledge.

From the beginning of George Washington's first administration to William McKinley's first term, the net balance in favor of the United States was \$383,000,000; since the beginning of President McKinley's first term until March, 1904, the net balance in favor of the United States was upwards of \$3,500,000,000. It would seem the part of wisdom to hold fast to those measures and the administration of public affairs under which such gratifying and unparalleled results have been accomplished. The American people have spoken, they have accentuated their faith and confidence in the party and its policies under which so much has been achieved in the interest of American trade and American commerce.



The republican party has wisely devoted itself to the promotion of all those measures which tend to expand our commerce. It has been liberal in making provision for the improvement of our rivers and harbors. It stands ready to make such further improvements as our national interests shall require.

It is of the utmost importance that the great harbors of the country should be so improved and maintained that the largest vessels which sail the seas may readily touch and trade with us. Expenditures should be conservatively made, yet they should be adequate to the needs of an expanding commerce.

We look forward with confidence and satisfaction to the early completion of the isthmian canal, which will increase in a large measure the commerce of the United States. The Atlantic and the Pacific seaboards will feel in an especial degree the impetus given to their trade by the construction of this great thoroughfare between the two oceans. Every section of the republic will share in some measure the benefits to accrue from the completion of this enterprise, which will stand forever as a tribute to the genius, the constructive statesmanship and the courage of the republican party.

All of the powers of American diplomacy have been invoked to enlarge the opportunity for trade in the distant Orient. We find there a vast theater of commercial enterprise, and if we are but true to our opportunities, our commerce in and beyond the Pacific is destined to attain proportions beyond our most optimistic dreams.

While the tariff question is an old one, it is of continual and vital interest. It must not be overthrown or surrendered either by ignorance or prejudice; it must be maintained by education, by intelligent discussion. The tariff issue was sharply presented in the platforms of the republican and democratic parties in the recent campaign. The republican party stood squarely by its protective policy, while the democratic party denounced protection as a "robbery." The republican party insisted that "rates of duty should be readjusted only when conditions have so changed that the public interest demands their alteration; while the democratic party

avored a revision and a gradual reduction of the tariff." Republican alterations are to be made, when necessary, along protective lines, while democratic revision means the elimination of the protective principle.

The republican party has revised tariff schedules in the past when revision was essential and it will not hesitate in the future to subject them to careful scrutiny and alteration so that our protective system may be just in its operation. Whenever change of schedules is essential in the public interest the alteration will be made; it will be made advisedly; it will be made with full knowledge, not in response to mere sentiment, but agreeably to sound economic necessity. Any other policy is obviously unwise and disturbing in its tendency.

The republican party adheres to the doctrines of commercial reciprocity, that reciprocity which tends to expand our commerce and to develop American industry in the interest of American labor and American capital. It holds to that reciprocity which is the "handmaiden" of protection, but not to that which is but another form of free trade and which is hostile to the protective system.

President McKinley has been quoted by the enemies of protection as favoring the democratic system of reciprocity. The text of his last great speech gives denial to such pretensions. His utterances were entirely free from ambiguity. No one could misunderstand them who did not desire to do so. He distinctly favored "sensible trade arrangements which will not interrupt our home production."

"We should take from our customers," said he, "such of their products as we can use without harm to our industries and labor."

And he further declared that, "if perchance some of our tariffs are no longer needed for revenue, or to encourage and protect industries at home, why should they not be employed to extend and promote our markets abroad."

It will be observed that he kept well in mind the home market and protection to our industries and labor. There is in these observations no suggestion of the abandonment by him of the great policy for which he lived and wrought so well. There is to be found here no evidence of any purpose

upon his part to yield the home market in the delusive hope of possessing foreign markets which would compensate for the loss.

A great responsibility rests upon the republican party. It is not overawed by it, yet fully realizes its significance. It has always had the courage and wisdom to meet the responsibility laid upon it by American people. We realize that all the great problems of government have not been solved; that there are many awaiting us in the future which will tax our patriotism and our capacity to govern. The republican party faces the future with a full appreciation of all of this and with a high resolve to meet present and future responsibilities with the sole purpose to advance to the utmost degree the welfare, the honor and the glory of our countrymen and our common country.

## NOMINATION BY DIRECT VOTE OF THE PEOPLE.

BY ROBERT M. LA FOLLETTE.

[Robert Marion La Follette, senator from Wisconsin; born June 14, 1855, at Primrose, Wisconsin; graduated from the University of Wisconsin in 1879; was admitted to the bar in 1880, and the same year was made district attorney for Dane county; seven years later he was elected to congress and was distinguished for the part he took in framing the McKinley bill; in 1901 he was elected governor of Wisconsin; senator in 1905; noted for his fight for direct primaries and other reforms.]

Every established practice and custom which tends to impair in any degree the citizen's right of suffrage subverts the principles of representative government and undermines the foundations of democracy.) Scarcely a score of years has passed since the sacredness of the ballot was made a prominent issue in national campaigns, and, doubtless as a result, there followed much of the legislation which effectively guards the casting and counting of the ballot in the general elections.

It is a plain proposition that the right of suffrage is much broader and more comprehensive than the mere physical act of casting the ballot without interference, and having it returned, as cast, without fraud. All of the guarantees of the constitution, all of the acts of legislation, are designed to secure and record the will of the citizen; to make it certain that, untrammelled and uninterrupted, the influence of his judgment may be felt in matters pertaining to government. If this be the real substance of the right of suffrage, then it becomes an equally sacred obligation on the part of the law-making power to so safeguard every step and proceeding which constitutes any element of the right of suffrage that the citizen shall be protected with respect to it.

When the voter enters the election booth to exercise that right he finds prepared for him an official ballot upon which is printed the candidates of each party for the offices to be filled at that election. This is the first point at which the citizen comes in contact with the perfect system of laws governing general elections. From the moment he enters



the booth until the ballot which he casts therein is counted and returned, he can find no cause for complaint.

But there are important proceedings, vitally essential to the right of suffrage, which are foundational, not only to manhood suffrage, but to the whole structure of government itself. What transpires back of the moment when the voter receives his official ballot must be as strongly fortified and as sacredly guarded as that which follows in the consummation of this right after he receives the official ballot. In other words, the act of suffrage consists not only in the voting and counting of the ballot, but in every step and every proceeding which is in any way connected with or involved in the preparation of that ballot before it comes to the hand of the voter.

If by bad practices and bad laws all the proceedings which control in the making of the ballot to be voted are taken out of the hands of the voter, his right of suffrage is not only impaired, but he has been deprived of it. The voting of a ticket at the general election in the making of which he has had no voice, robs him of his voice in the election. He has simply been an instrument in the hands of those who prepared the ballot, in casting which he records not his will, but their will.

The preparation of the ballot and the placing thereon of the names of the candidates of the respective parties, is, therefore, not a matter of secondary, but a matter of primary importance to the exercise of the right of suffrage. It is a matter of supreme importance to the establishment of good government and to the protection of the basic principles of democracy.

The right of suffrage then may be divided into two separate and distinct transactions, each necessary as a complement to the other.

First, all of the proceedings, acts, and measures necessary to insure to each citizen the right to vote directly, under the sanction of a law which shall protect him from interference, in the selection of the men as the candidates of his party to be voted for at the general election.

Second, all of the proceedings so well provided for at the present time by statutes governing the general elections.

The first step in suffrage is exercised in the selection or nomination of the candidates of each party. The second step in suffrage is exercised in the election of the candidate to office. Any interference with the citizen in the exercise of his prerogative in either case is equally destructive to his right of suffrage.

It is no longer open to dispute that the nomination of candidates for office has in a very large measure passed out of the hands of the citizen. For many years it has been popular with certain theoretical writers upon the subject to place the responsibility for this entirely upon the citizen himself, and to charge him with dereliction of duty and want of interest in public affairs, absorption in business interests and pursuit of fortune being assigned as primary causes of neglect of these elementary duties of citizenship. But it is fair to say that the citizen always has manifested the same willingness to participate in the affairs of government, to perform his duties in the elections, to serve in the rank and file of his party in the campaigns, that he has to defend his country in the field when the sterner duties of war summoned him in its defense. A close study of the history of caucuses and conventions will convince any unbiased mind, in search for truth, that the voter has been gradually eliminated as a factor, after long, patient trial, because the delegate system has utterly failed to represent him or to reflect his opinion in its results.

Through the succession of generations human nature is the same, and when De Tocqueville declared that "the most powerful, and perhaps the only, means of interesting men in the welfare of the country is to make them partakers in the government," he uttered a truth which applies quite as forcibly to the primary step in suffrage, as to the secondary step in suffrage,—to the nomination of candidates as to their election after nomination. And the interest and influence of the voter can be as well and as certainly secured in the one as in the other, if the same means are taken to guarantee to him the same certainty of result respecting the one as the other.

No man enjoys being made a puppet of, and to rally to the caucus only to have his effort defeated by a well organized

and well disciplined minority, or, if delegates are chosen who seem to reflect the will of the majority in the caucus, to discover later that through the complicated system of delegating and re-delegating their authority, the nominations finally made are the result of the dickers and deals and combinations and commercial transactions which rule modern conventions. It would be strange, indeed, if the citizens should continue to be interested in the proceedings of a system productive of such results. Abolish the laws which now make elections an honest reflection of the will of the voter and introduce the same elements of uncertainty and fraud which are an inherent part of nominations through convention delegates, and the interest of the citizen in the general election would fail as certainly as it has failed in the preliminary.

It is not enough to say that the voter has his opportunity to attend upon the caucus and express his choice as to delegates. This is to offer the form of the thing for the substance. If the voter, time after time, casts his ballot and elects the delegates of his choice only to discover in the end that he has been in some way betrayed, and the decision of the majority in fact reversed, it is inevitable that he should as a serious minded citizen refuse further to participate in the farcical proceedings. It is this that has driven the majority of the voters from the caucus until it is only in times of profound public concern and intense public feeling that even a respectable minority of the voters are represented in the caucus and convention system.

Public interests are certain to fare badly when there exist conditions, either as the result of legislation or for want of it, which eliminates from participation in government a majority of the citizens in a democracy. The evil consequences sure to follow from such a situation are twofold, in the effect upon the citizen, and the effect upon the public official.

If the caucus and convention system operates to exclude a majority of the voters from taking part in making the nomination, it abridges the right of suffrage, it weakens the voter's interest and affection for the state, it instills apprehension and suspicion with respect to that government which the citizen



comes more and more to feel is not his government, and deprives the state of that loyalty and devotion which is nourished in unification of interests born out of the largest measure of direct personal participation possible in a representative democracy. This is but another way of saying that the basic principle of democracy is personal responsibility; that there can be no personal responsibility unless the voters are "part-takers in the government."

Compelling the citizen to hand his sovereign right, to vote directly for the candidates of his choice, over to some caucus delegate, to be turned over to some convention delegate to barter for something for himself, impairs the voter's right of suffrage, and its evil effects in representative government are more strikingly manifest in the actions of the public official than of the private citizen.

The official well understands that his nomination through convention delegates invariably is secured without the consent of a majority of the voters of his party, or, indeed, without the consent of even a fair minority of his party. He well knows the value of the powerful influence of public service corporations through the caucus and conventions, and this knowledge bears strongly upon his official action. He reasons that under ordinary circumstances the unlimited use of money, the support of purchasable newspapers, the maintenance of perfect organization, all attainable through the vast resources of such corporations, will, under ordinary circumstances, enable him to succeed in politics.

It cannot be seriously doubted that under a system of nominations by direct vote of the people, their influence upon the official could not fail to be very much more pronounced and direct. He would well understand that in order to secure their approval and support to continue him in public life, he must win that approval upon the merit of his record in their service. He would know that every vote cast, every act as a representative in aid of measures or opposed to measures affecting the public interest, would be canvassed and reviewed when he came to seek re-nomination; hence, his record as a public official would be made day by day with that sense of personal responsibility, arising from a knowledge of direct



and certain accountability to the people, pointing the way he should go.

This is the one thing needful in a republican form of government, and the one thing which cannot be dispensed with in any of the affairs of life where one man performs services for another. No trust would be safe, unless the trustee knew that he would be required to render an account of his stewardship to one having authority to terminate it. In no other trust positions are the opportunities for evading responsibility so many or the temptations for betrayal so great and the likelihood of confusing and befogging the issue so favorable as in the public service. Hence it is imperative that the trustee be required to account directly to those whom he represents in the discharge of his trust.

This is the fatal defect in the caucus and convention system of selecting candidates to be elected to office. Even if men chosen as delegates in the caucuses and conventions were never guilty of a wilful and corrupt betrayal of trust, if bargains and deals and bribery could be eliminated, nevertheless the entire plan should be abolished because it removes the nomination too far from the voter, the trustee too far from him for whom he bears the trust, the agent too far from the principal. Every transfer of delegated power weakens authority and diminishes responsibility until the candidate nominated represents nothing that the voter wanted, feels under no obligation to the voter for his nomination, nor is he directly accountable to him for his acts as a public official.

The momentous importance of discarding the delegate system and securing the personal responsibility of the official to the citizen is rapidly coming to be accepted through the country. Already legislation recognizing the principle of nominating by direct vote of the people has been applied in making nominations in a dozen different states, while the legislatures of others have taken hold of the subject in an earnest way.

To secure a more direct expression of the will of the people in all things pertaining to the people's government is the dominating thought in American politics to-day. The citizen will no longer surrender to delegate, agent, or substi-

tute, any political control which he may properly exercise for himself. He understands that in some matters pertaining to government he must be represented by a public servant. The citizen is resolved to participate directly wherever he can, and in all matters where he must be represented by another, to bring that representative as near to him as possible. The fundamental principle upon which this government was established can no longer be subverted.

The nomination of all candidates by direct vote under the Australian ballot should appeal to the patriotism of all legislators and lift them above partisan and personal prejudice, in a united effort to give the people a system of electing public officials truly representative of public interests; in restoring to the people in full measure this principle of pure democratic government. This is required particularly of republicans, by every obligation which can be made binding upon the honor of the representatives of any political party in the public service.

Since the adoption of the federal constitution, government in this country has been through the agency of some political party. Political parties are not organized or maintained upon the personality or strength of individuals, but around certain deep seated ideas which lay hold of the convictions of men. These ideas when formulated and proclaimed become the party's declaration of principles, its promise to perform. This declaration of principles, this promise to perform, is of the highest importance to each citizen. When so proclaimed it enables him to determine his party affiliation. He well understands that one political party or another will control government, will make and administer the laws. Hence, he gives his support to that party which promises to do the specific things that he regards of the highest importance to the state and to the welfare of every citizen. The party promise, therefore, is a covenant with the voter upon which he has staked his faith and his interests. He has given his support, he has invested the party with his authority, he has made it possible for the party to control in government. Upon its promise and his support the party has become the custodian of his political rights as a citizen, of his property right as a man.

But the party obligation goes still further. The obligation of the party is made the more binding because it has sought out the citizen, urged acceptance of its pledges, pressed them upon his consideration, proclaimed again and again its purpose to keep them in letter and spirit. It has made the citizen its solicitor and secured his good offices to repeat its promises, proclaim its principles, and enlist in its ranks his neighbors and friends. Having received his vote, his influence, his devotion, the party is bound to keep its pledged word. This is its title to confidence. This measures its value as a power for good in representative government.

The party itself will not fail. Men in masses are not drawn together in support of principles which endure the strain of protracted contest without fixed convictions. The party is the aggregation of citizens bound together by an agreement of opinion respecting the declared principles of the party. They are for maintaining the principles and keeping faith with one another. Fixed convictions are the foundations of good faith. The party honor is safe with the party. It will not betray itself.

But the party must select men as its medium of expression in government from the members of its organization and make them public officials to execute the will of the majority. Upon the public official then there falls the full weight of this double obligation. He represents the individual citizen in person. He is the custodian of the party honor. He cannot play fast and loose with clearly understood personal and party obligations and maintain a semblance of official integrity. He has no more moral right to quibble and evade, to say that he will perform a part and repudiate some of the specific promises of the party, than he would have to use in part trust funds committed to his keeping. If this be counted too exact a standard of public duty to-day, be sure that it will not be so regarded to-morrow. The citizen is being rapidly schooled by experience throughout the entire country, and is fast acquiring definite ideas of the right relation of the political party to government, of the citizen to his political party, and the duty of the public official to the citizen, to his party, and to the state.

To enact the will of the people into statutory law requires the majority action of senate and assembly and the approval of the governor. What, then, will it avail if in order to insure better government for the people they are accorded direct control of the selection of their candidates in the legislature by direct vote for their nomination, and are compelled to leave the nomination of the chief executive of the state to a system in which the influence of the public service corporation is known to be most potent?

The same principle should be applied in congressional nominations. Members of congress directly represent the people upon questions of supreme interest to them. The people should have the right to vote directly for or against them in making nominations. Upon trusts, tariff revision, a thorough regulation of interstate commerce by the interstate commerce commission, and many other questions, the public judgment throughout the country is taking very definite form. Under a system of direct nominations, including members of congress, national legislation in the popular branch of congress will more nearly reflect the enlightened judgment of the citizenship of this country.



## POLITICAL EVOLUTION AND CIVIL SERVICE REFORM.

BY HENRY JAMES FORD.

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The direct improvement of the civil service was but the lesser part of the benefits expected from civil reform. When the act of 1883 was passed it was believed, and with good reason, that the operation of the law would set up such tendencies toward improvement in the character of our politics that its beneficial results would be felt throughout the whole frame of government. The result has been a bitter disappointment. Instead of an increase of moderation, order, judgment and control in the management of public affairs, concurrently with the extension of civil service reform, there was an increase of passion and recklessness. Tariff legislation has been more frequent and radical than during any other period of our history, and public interest in the subject has abated more through fears of the process than from satisfaction with what has been done. A scheme for compelling the treasury to purchase the output of the silver mines shook the national credit and brought on a financial panic. Meanwhile congress appeared to have become a mere tool in the hands of interests banded together to raid the national treasury, so that neither national needs nor treasury deficits and impending bankruptcy, could check projects of expenditure or induce provision of revenue to meet them. The increase in the bonded indebtedness which took place is largely attributable to this cause. In the period from 1883 to 1889, inclusive, the expenditures, leaving out of account the interest on the public debt and the cost of the army and navy, increased from \$142,053,186 to \$341,655,884. That is to say, the

expenditures increased 140 per cent while the population increased 37 per cent. )

While such has been the character of national legislation, the tone has been equally extraordinary. The senate descended to inconceivable depths of degradation during the struggle over the repeal of the silver purchase law. The house of representatives has behaved with greater decency, but the fact has been plain that this has not been due to any improvement of its natural inclinations, but to arrangements made for suppressing them, through the development of absolute powers in the speakership. ( At the same time certain remarkable manifestations of deep changes in the character of our politics appeared. Their tendencies became distinctly retrogressive, sinking them to a lower level and inflaming their worst propensities. Factional animosity reached such a furious pitch that it burst the bonds of party organization, and the unprecedented spectacle was displayed of a national convention hooting the name of a president elected by the party which it claimed to represent. A still graver portent than all these things was the appearance of a strange distemper of public sentiment. The party enthusiasm which is the ordinary mood of the masses of the people gave way in large measure to ill humor with the constitution itself. Revolutionary programs of political action commanded an alarmingly large following. The very foundations of social order were shaken and the state of the times occasioned deep anxiety among all thinking men. So that, at the close of a period marked by a rapid extension of civil service reform, the dominant mood among those who reflect upon the course of events is certainly not one of exultation. ) On the contrary, public attention is challenged by remarkable expressions of pessimism in regard to the republic, its people and its institutions. One may detect the flow of a current of scepticism as to whether the progress of the nation has true moral worth. A feeling of despondency as regards the future of popular government is discernible, expressing itself in a scornful, supercilious and malignant tone of criticism upon public affairs, or in an attitude of contemptuous aversion for our politics.

How are we to account for such a strange set of phenomena? The laws which govern the activities of politics are too abstruse to be easily discoverable. Even such a fundamental fact of modern politics as government by party has yet to be elucidated, and we are just beginning to appreciate the fact that party is a principle of social regimentation, akin to those instinctive processes of thought and feeling by which authority is produced and governmental functions created in social aggregates, prior to the beginnings of national consciousness and of political development. It has been said that man can not concurrently produce a new social order and trace out the laws by which it is governed, and that this is true all history attests. A century or so must elapse before the type of government which America is working out can be appreciated and the formative process be fully revealed. But applying to the problem before us the empirical methods which are all that are now open to our use, a sequence of causation may be traced that will enable us to arrive at some understanding of the events of the period.

It is impossible, I think, to avoid the conviction that there is a connection between civil service reform and some of the most alarming phenomena of our politics during the past ten years. This connection most plainly appears in the course taken by financial agitation. It is the rule of our politics that when the party in power is forced to meet new issues, the position it takes is occupied for it by executive policy, and executive influence is the factor by which the adjustment of party interests to the new conditions is accomplished. When the democratic party was confronted by the silver issue, it seemed that events would take their usual course. The historical connection of the democratic party with the establishment of the gold standard, and the fact that the free silver propaganda was at first almost wholly a republican party interest, indicated the direction of the policy of the democratic administration and smoothed the way. The conditions were such that it might have been supposed that President Cleveland would have been as successful in determining party policy as was President Grant in the case of the greenback movement, and with less difficulty.



For several years the course of events tended that way. On June 5, 1890, 102 democrats in the house voted in favor of Bland's free coinage bill and only 13 against it. On March 24, 1892, 81 democrats voted against the same bill. On July 13, 1892, when Mr. Bland asked for an order to take up the free coinage bill which had passed the senate, there were 94 democrats against it. On August 28, 1893, there was an actual majority of democrats against free coinage, 114 voting against Bland's motion to 100 for it. During the struggle in the senate over the passage of the bill repealing the silver purchase law, the power and influence of the presidential office were exerted in ways that were decisive. But as the fact was developed that the president was prepared to suffer the loss of party connection rather than surrender his individual convictions in regard to civil service reform, the situation changed completely. The free silver faction won a sweeping victory and captured the democratic party organization. The connection between the civil service reform policy of the president and the violent recrudescence of free silver sentiment in the democratic party was too plain to be overlooked. The New York "Evening Post," in its issue of July 16, 1896, justly remarked:

"The historian who shall look carefully into the causes of the free silver movement in the United States in the year 1896 will find that one of its most potent elements was the jealousy and hatred of the democratic leaders for President Cleveland. . . . It began back in his first term when he refused to consider that one of his chief duties as a democratic president was to satisfy democratic hunger for office."

It is melancholy to reflect that a measure expressly designed to elevate the tone of our politics should have reacted so disastrously upon them, but I think that this was only the natural result of the methods adopted in the extension of civil service reform. The constitutional method for the propagation of reform is by the education of public sentiment so as to influence the constitutional agencies of public opinion, and in this way any progress that may be effected is adjusted to political conditions. The attitude of a wise statesman was that assumed by President Grant.



He was sincerely attached to the cause of civil service reform, but he always insisted that such a reform to be beneficial "must have the acquiescence of congress as well as of the executive." For five years he urged the subject upon the consideration of congress in his messages. Finally, in his annual message of December 7, 1874, he stated his position as follows:

"The rules adopted to improve the civil service of the government have been adhered to as closely as has been practicable with the opposition with which they met. The effect, I believe, has been beneficial upon the whole, and has tended to the elevation of the service. But it is impracticable to maintain them without direct and positive support of congress. Generally, the support which this reform receives is from those who give it their support only to find fault when the rules are apparently departed from. Removals from office without preferring charges against parties removed are frequently cited as departures from the rules adopted, and the retention of those against whom charges are made by irresponsible parties and without good grounds is also often condemned as a violation of them. Under these circumstances, therefore, I announce that if congress adjourns without positive legislation on the subject of civil service reform, I will regard such action as a disapproval of the system, and will abandon it, except so far as to require examinations for certain appointees to determine their fitness. Competitive examinations will be abandoned altogether."

President Grant's action in abandoning an experiment which public opinion did not sustain through the constitutional agencies of its operation, was an acute disappointment to reformers, but looking back upon it with the advantage of a broader view of the whole state of our politics, we are able to see that by not breaking with his party, he was able to accomplish great public benefits. The defeat of the greenback movement, the passage of the act for the resumption of specie payments, and the defeat of the equalization of bounties bill, were among the fruits of that policy just as much as was the reluctant abandonment of civil service reform.

The beginnings of civil service reform in this country were cautious. The author of the act of 1883 and its advo-

cates were careful to give assurances that the measure was not intended to be sweeping in its operations. Senator Pendleton, who presented the bill, said that "it only applied to employes in the departments at Washington, and large offices employing over fifty clerks—not over ten thousand employes all told." In his report on the bill, he said: "This bill does not touch the question of tenure of office or removals from office, except that removals shall not be made for refusing to pay political assessments or to perform partisan services. It leaves both where it finds them." These assurances turned out to have been misleading. Since obtaining the grant of authority conferred by the act, reformers have acted as if further caution were needless and as if all that remained to be done was to instigate the president to use the executive authority unflinchingly in extending the scope of the reform. So little averse were they to "sweeping, revolutionary proceedings," such as the English reformers deprecated, that their influence procured the executive order of May 6, 1896, which swept into the classified service over thirty thousand positions, with such disregard of practical considerations, that it became necessary to begin to make exceptions almost immediately, in order to keep the necessary machinery of government from being thrown out of gear.

In England, the successive stages of civil service reform were carefully prepared and were connected with the development of parliamentary support. In this country, it is notorious that in the extension of the reform, the sentiment of the legislative branch was not conciliated, but defied. In his message of December 4, 1893, the president went so far as to tell congress: "The law embodying this reform found its way to the statute book more from fear of the popular sentiment existing in its favor than from any love for the reform on the part of legislators, and it has lived and grown and flourished in spite of the covert as well as open hostility of spoilsmen. . . . ." This admission that the extension of civil service reform has been an imposition upon our politics instead of being a gradual outgrowth from them, explains the superficial character of its effect and the dangerous reactions it has excited.

From mischiefs of such origin as I have indicated, American politics, like English politics, are ordinarily protected by their dependence upon the activities of public sentiment for their supplies of force. But in matters falling within the compass of executive powers, it is possible for a president to pursue an individual policy regardless of consequences. This involves a risk to constitutional government, against which the high character and sincere patriotism of our presidents do not afford complete security, for the risk lies on the side of mistaken views of duty adopted under the influence of false but plausible theories of civic virtue. A theory of this kind has been framed and vigorously promulgated in connection with the extension of civil service reform. As originally conceived, the government rested upon a basis of prerogative, the general care and management of it being the duty of the president. "Our president," said Gouverneur Morris, when the office was being discussed in the constitutional convention, "will be the British minister," and later on he remarked that in England "the minister" was now "the real king."

It was with this in mind that, during the first session of the senate, Ellsworth of Connecticut, who had been a member of the constitutional convention, argued that in the form of legislation the president should be mentioned as a party to the enactment, because of "the conspicuous part he would act in the field of legislation, as all laws must pass in review before him and were subject to his revision and correction." It is evident that the fathers had in mind the old-fashioned English king, who himself conducted his administration, before the days of ministerial domination based upon parliamentary interest. This ideal—which was never fully attained in practice, although Jefferson came pretty close to it in his first administration—was obscured by the growth of the system of choosing presidential electors by popular election, and was definitely overthrown by the election of Jackson and the establishment of the party convention system. Concurrently with this process of constitutional development, an appropriate conception of the presidential office took shape. According to it, presidential duty was



subject to party obligation, so that the power and patronage of the president were to be regarded as a party trust, to be exercised for public ends, as seen and approved by party sentiment, under his instruction and advice. This is the theory which until the era of civil service reform governed the action of our presidents. It produced its ideal type of president in Abraham Lincoln. Whatever may be the defects and disadvantages of this theory, it is a necessary phase of political development, for it rests upon the incontestable fact that under existing political conditions party mediation supplies administrative connection between the executive and legislative branches of the government, and furnishes public opinion with an organ of control which although imperfect is certainly better than none at all.

This theory of presidential duty is quite acceptable to the mass of the people. Indeed, it is the only one which they entertain. The complications of our constitutional scheme are but hazily perceived by the people. Their disposition is to resolve all difficulties by the one solution that if we elect a good president he will see that things go as they should. But this theory was not acceptable to impatient reformers because it tended to restrict the advance of civil service reform by conditioning it upon the extent to which party sentiment could be impressed in its favor. This restraint was avoided—and at the same time the factor of safety was eliminated—by the doctrine that the highest duty of a president was to assert and maintain his independence of party connection when that conflicted with his individual convictions of duty. This doctrine assumed that legislative concurrence ought to attend an administration conducted upon such principles, but it was held that if such concurrence did not follow it was not the fault of the president, but of our politics, and the consequences, however deplorable, were in no respect chargeable to him. He had done his duty and was not to be blamed if congress did not do its duty.

This doctrine finds no basis except upon the theory that upon congress rests the whole responsibility for the character of legislation, the responsibility of the president being confined to the exercise of the veto power, the faithful execu-



tion of the laws, and the maintenance of good discipline in the public service. This theory is contradicted by all the facts of our constitutional history. The conversion of the presidency into the headship of a bureaucracy, with only a hortative relation to congress, has subverted the constitutional basis of the government, and has given an irregular operation to the play of political force, with the pernicious results which the nation has experienced.

It is not until we take into consideration the effect of this theory in modifying conceptions of the responsibility of the presidential office, that we are able to account for the renunciation of presidential initiative and control in details of legislation, that is such a marked feature of the middle of the period under review. Senator Sherman in his Memoirs attributes the passage of the silver purchase act of 1890 to the inaction of the president. He says: "A large majority of the senate favored free silver; and it was feared that the small majority against it in the other house might yield and agree to it. The silence of the president in the matter gave rise to an apprehension that if a free silver bill should pass both houses, he would not feel at liberty to veto it. Some action had to be taken to prevent a return to free silver coinage, and the measure evolved was the best obtainable." Such ignorance on the part of the chairman of the finance committee, of the policy of a president elected by his own party, on such a vital issue, is an event without precedent in our constitutional history, and when such a presidential attitude is contrasted with former ideals of presidential duty and responsibility, it is apparent that a great change had taken place in the functions of the presidency. Another striking instance of this fact is presented by the passage of the disability pension act of March 4, 1890. A bill of that title passed by the fiftieth congress was vetoed by President Cleveland, and his action was condemned by the platform upon which his successor was elected. But the bill as it finally became law was a different measure. The vetoed bill, according to the chairman of the committee which framed and reported it, provided for "but one pension, and that pension is one of \$12.00 a month and is given for a

total inability to procure a subsistence by daily labor." The committee estimated that the number of beneficiaries could not exceed 100,000 nor the annual cost of \$12,000,000. In the bill as finally passed, widows and minors were included among its beneficiaries, partial as well as complete disability, from any cause, to earn a support by manual labor, was prescribed as the condition upon which the pension was granted, and so a measure proposed as a means of keeping destitute veterans out of the almshouse was made the means of giving pensions to men earning large incomes by other than manual labor. Instead of 100,000 beneficiaries, the number on June 30, 1898, was 539,638; and the expenditure instead of being \$12,000,000, exceeded \$66,000,000 in 1897. I do not see how a president inspired by the sense of responsibility under which President Grant acted, could have failed to exert himself to confine the measure to its original proportions, or, if he could not do that, to interpose his veto, as President Grant did in the case of the equalization of bounties bill.

The conclusion to which these considerations lead is that the period under review is one of public malady due to aberrations from the normal course of our politics. In its general character the period is analogous to that which took place in English politics when an attempt was made to disregard party and found administration upon abstract principles of right. The theory of presidential responsibility to which I have referred, which prescribes purity of conduct as its complete boundary of duty, is the Tory doctrine which was advocated by Bolingbroke and which was subjected to destructive analysis by Burke in his "Thoughts on the Cause of the Present Discontents." Some of Burke's remarks upon the consequences read as if they had been written with an eye upon the situation in this country. What could be more apposite than this?

"When the people conceive that laws and tribunals, and even popular assemblies, are perverted from the ends of their institution, they find in those names of degenerated establishments only new motives to discontent. . . . A sullen gloom and furious disorder prevail by fits. . . .

A species of men to whom a state of order would become a sentence of obscurity are nourished into a dangerous magnitude by the heat of intestine disturbances; and it is no wonder that by a sort of sinister piety, they cherish in their turn, the disorders which are the parents of all their consequence. Superficial observers consider such persons as the cause of the public uneasiness, when in truth they are nothing more than the effect of it."

At such junctures the special measures or the particular candidacies which the people may support, are merely incidental. Criticism upon them, however true and forcible, is beside the mark. What the people really demand, prompted by a political instinct which does not deceive them, is efficient leadership, and they model their opinions to suit the emergencies of the situation. A people of the same stock with those who seized the leadership of even so worthless a demagogue as John Wilkes, to overthrow the same principles of government as those which have been imposed upon American politics, are not likely to trouble themselves much about base metal in any instrument they may find convenient for their purpose.

There is no system of physic for constitutional distempers; the cure must come from hygienic processes. Such processes are at work; unmistakable indications appear of a return to normal politics. Party discipline is being restored and public control over the agencies of government is being asserted. Presidential initiative is resuming its proper place in our political system, under the compulsion of necessities which can not be evaded or disclaimed and which demand the full exercise of the power and influence of the presidential office in the direction and management of the public business. The new responsibilities which have devolved upon the nation, however they may be treated and whatever their results may be, will certainly augment this constraint of necessity which has been the cause of every advance in constitutional development, beginning with the adoption of the constitution itself, and such a powerful stimulus to effort can hardly fail to promote the formation of a settled type of government and the harmonious adaptation of its functions to the national character.



## MUNICIPAL SELF-GOVERNMENT.

BY EDWIN BURRITT SMITH.

[Edwin Burritt Smith, lawyer; born Jan. 18, 1854, at Spartansburg, Pa.; educated at Oberlin college and received the degree of A. M. in 1893; was graduated from the Union college of law, Chicago; began practicing law in 1881 in Chicago; professor of law in Northwestern university, 1894-1902; has been prominent in political reform movements and was president of the National Municipal league, edited reports for the United States supreme court and for the appellate court; contributes to prominent journals.] Copyright 1902 by Houghton, Mifflin & Co.

Municipal government in the United States is undemocratic. The city is the agent of the state. The people of the state arbitrarily govern the city. The mosaic which we call municipal government is the means by which the people of the state exercise arbitrary power over minor communities in matters purely local. The exercise of such power, by indirect and complex means, has resulted in bad municipal government. That it would so result was inevitable.

Democratic government is an expression, not a source, of authority. The people governed is the source of its powers. The government of the United States derives its powers from the people of the United States. The government of the state derives its powers from the people of the state. The government of the people should obtain its powers from the people of the city.

Our national and state governments were created by the people to serve them in different spheres. Neither derives authority from, nor acts as the agent of, the other. Both derive authority directly from the people,—that of the nation from the people of the nation, that of the state from the people of the state. The line between nation and state is clearly drawn. The government of the nation is confined to those matters which concern the entire people of the nation. The line between state and city should be as distinctly drawn. The government of the state should be confined to those matters which concern the entire people of the state. Thus the government of the city would be left free to deal with those matters which concern only the people of the city



The supreme authority in our system is the people of the United States. They, as an aggregate sovereign, by means of the constitution, created a national government, with certain well-defined general powers. Incidentally and to guard the exercise of the powers thus conferred, they imposed limitations on the states. By the tenth amendment they reserved to the states and to themselves the powers not delegated to the national government. The state has appropriated to itself these reserved powers. It should have left to the people those of local concern, to be by them conferred on the city. This would have carried out the democratic scheme of government devised by the fathers, and by them in part applied.

The work of the founders of the American commonwealth in framing our state and national governments has been much and justly admired. Theirs was indeed a splendid achievement of constructive statesmanship. That they omitted to add a simple and democratic plan of municipal government is doubtless due to the fact that large cities did not then exist. What have become the public necessities of city life were unknown. Such municipal administration as was required was simple and without important bearing on the larger matters of state and national government. Hence, in framing their scheme of government, the fathers of American democracy overlooked what is now the vast and widening field of municipal activities.

This omission in the organization of democratic government in America has never been remedied. As municipalities grew, the rapidly multiplying wants of urban populations were met by haphazard makeshifts. Institutions by means of which rural communities and small villages had realized local self-government were retained, and extended to meet needs for which they were not devised and are not adapted. As the strain increased, the state added numerous officials, boards, and commissions.

Thus the government of every American city has become a huge conglomerate of warring officials and boards representing the state. Elective officers and elections have been so multiplied that it is a difficult task merely to keep the

offices filled. What we call municipal government is too complex to be understood save by experts. The people, always busy with their own affairs, have more and more left the entire matter to the tender mercies of the political bosses and franchise grabbers. In this way municipal administration has been diverted from public to private ends.

The state, in attempting to govern the city, has unduly emphasized the executive view of municipal administration. Indeed, to the extent that city government is an agency to express the will of the state, its function is only executive. The power to legislate is the distinguishing mark of self-government. The mere right of the people of the city to choose between rival aspirants to local executive office, under state authority, involves only the power to determine whether state laws shall be strictly or loosely enforced. To be really self-governing, the people of the city must enjoy the right to create a body having power to legislate for them in all matters of local concern.

The policy which makes the city the agent of the state has led to anomalous results. In nation and state the legislature is the affirmative power. It speaks directly for the people. It expresses their will in continuing laws of general application. Its function is to determine public policies. The executive and the judiciary merely participate in the enforcement of the laws. They deal with individual matters as they arise. Their function is to administer. In a city, which exists mainly to enforce state legislation, these conditions are reversed. The play is an exotic. The mayor is the star performer. The council plays but a minor part. The mayor, when chosen, assumes to his constituency the rôle of temporary dictator. As a representative of the state, he is subject to its legislative authority. Nominally an officer of the city, he is beyond the control of its people.

The council of a city, which exists as a creature of the state, is at best an unnecessary, and at worst a contemptible thing. The mayor and his cabinet might perform its part; indeed, the tendency is to confer upon the mayor powers taken from the council. In most American cities it is thought that bad municipal government is directly chargeable to

the council. To escape evils lightly assumed to pertain to the council, the mayor is given increased authority. The council, thus deprived of most of the poor powers which it once possessed, is left a derelict on the troubled sea of municipal misgovernment.

The evils which result from undemocratic municipal government extend far beyond the city. The legislature of the state, if empowered to deal with none but matters of general application, might be a responsible and efficient body. Charged as it is with the power, even duty, constantly to intermeddle in the affairs of every municipality in matters purely local, its sessions have become log-rolling bees. Local measures clog its calendar. Each member seeks to press such of these as affect his locality. A gang of members from a single city, acting as the chattels of public service corporations, often coerce their fellows into action prejudicial to the public welfare. A measure which sacrifices the rights of the people of but a single community can rarely be expected to arouse to effective opposition the people of a great state. The good of the locality, often of many localities, is sacrificed that the public business itself may proceed.

Thus the undemocratic attempt by the people of the state arbitrarily to govern the city results in making the government of both city and state irresponsible, inefficient, corrupt. Indeed, means better calculated to divert the powers of government from public to private ends could not be devised. No man or group of men can be trusted to exercise irresponsible power. The government of the city by the state violates the principle of self-government. It endangers the state in the vain effort to save the city. It relieves the people of the city of local responsibility. It corrupts and paralyzes both state and city administration.

The proposal to make the city as independent of the state as the state is independent of the nation does not involve the loss of proper state authority within the city. The nation exercises an authority within the state which extends even to its individual citizens. The state must continue to legislate generally for all its people in respect to such matters of common concern as crime, personal rights, the family,



education, property, corporations, commerce, elections, and general taxation. These great duties are obscured, often imperiled, by continuous strife at the state capital over conflicting local interests.

The legislation of the state touching civic affairs will continue to be enforced in the city mainly by local officials. Indeed, the execution of state laws in each of its communities by officers locally chosen is what has made the state, despite an undue centralization of legislative power, the chief conservator of local self-government. It is of much greater importance to preserve this time-honored practice intact than it is to have all state laws well and uniformly enforced. The vital objections which lie to a state constabulary lie equally to the absorption by the state of those legislative powers which can be locally exercised.

What powers may be locally exercised? In brief, all powers that do not concern the entire people of the nation or of the state. Among these are the power to frame a city government and define its authority, the police power so far as local, the power of taxation for local purposes including schools, the power to establish and administer streets and parks, the power to supply public necessities directly or by means of the public service corporation, and the power to establish and administer reformatory and charitable institutions. It is objected that the people of the city cannot safely exercise such powers; that they are incapable of self-government. It is urged that the government of the state must stand guard over the people of the city; that it must save them from themselves. The answer is obvious. The government of the state is not a storehouse of saving grace. It is at best but an expression of the will of the entire people of the state. It is too often the means by which incorporated greed uses the public authority for private ends. It is impossible for the entire people of a state to know the needs of its several local communities as well as their own people know them.

The people of the nation permit the people of the state to determine for themselves nearly all matters of state government. The people of the state may with like propriety per-



mit the people of the city to determine for themselves practically all matters of city government. This by no means implies that the exercise of this permissive local authority shall be free from proper constitutional and statutory limitations. Municipal government may be made to conform to a general state policy without taking from each municipality liberty largely to determine for itself the limits and the means of its activities. The state, for example, should, by definite law, protect the right of all its citizens freely to compete for public employment. It should establish laws of uniform application, providing especially for such matters of common interest as popular education, the preservation of health, and the regulation of the liquor traffic. It may provide broad restrictions touching some matters of common interest, leaving the city free to add to them if its people so desire. It may prohibit city interference in matters of vital general concern. It is for the people of the state, in framing its constitution, to determine what matters shall be under state control without local interference, what matters shall be left to the city subject to certain restrictions, and what matters shall be under city control without state interference.

The city must act through agents. In this it is like the state. It need not rely on the state for protection from its agents. Restraints may be imposed on constituted authority as well by city charter as by state constitution. The people of the city should be permitted, under proper general limitations, to frame a city constitution or charter. They should be free to determine all questions of municipal public policy. They should possess power to legislate as well as power to administer. They should enjoy legislative as well as administrative freedom.

We at last realize that neither in state nor in city is it necessary to confer final authority on public servants. It is now clear that there should be ratification, express or implied, by the people, of the more important acts of their representatives. There are great possibilities in the growing desire of intelligent citizens to participate more directly than heretofore in legislation. The people may in time both choose and direct their agents. They may also reserve power

to pass on all important legislative acts on petition of a certain percentage of the voters within a fixed time. That by such means the agents of the people may be made responsive to their will is believed by increasing numbers. Private principals often reserve the power to reject or ratify the acts of their agents. There are even weightier reasons why the people should reserve the power to reject or ratify the acts of public servants. It is not necessary to confer upon them unlimited power.

The local independence here advocated is required fully to carry out and make symmetrical our scheme of government. When this measure of local independence is secured, ours will really be a government by the people. The city must be governed by the people of the city, if it is to be an instrument of democratic government. The state must surrender arbitrary power, if it is to be merely an agency of a self-governing people. If government by the people is desirable, it should alike obtain in nation, state, and city.

This course would leave each of the three distinct governmental agencies of the people free to perform its functions without interference by the others. It would make each directly responsible to its special constituency. It would confer upon each practically exclusive control of a few great matters of common interest to its people. Nothing so conduces to make a representative government efficient as to limit its jurisdiction to a few important matters of common interest to those for whom it speaks. Efficiency rapidly decreases with the multiplication of the subjects with which a representative government deals.

Our government, to mere casual observers, seems complex in form and difficult to understand. Our national government is, in fact, simple. It deals only with those great concerns of general interest to the people of the United States. Our state governments would be equally simple if each were confined to the important matters which concern its entire people. To the attempt of the states to combine both general and local functions is due the apparently inextricable confusion which has so long characterized our state and municipal governments. Give to state and city

separate and distinct powers; make each directly responsible to its special constituency; permit neither to exercise other than direct representative authority: the result will be simple, responsible, efficient government.

The state, to the extent that it has exercised arbitrary power over its cities, has ceased to be democratic. The result might have been foreseen. No despotism is so unrestrained as the despotism of a crowd. It may be safely asserted that nowhere else is municipal government so irresponsible as it is in the United States. When our national, state, and city governments shall severally and directly represent their respective constituencies, when none of them shall exercise other than representative powers, we may claim that ours is in fact as well as in name a democratic republic.

The extent to which the city is made the agent of the state differs greatly in the several states. In certain states the legislature, by special acts, governs each city separately, even in matters of petty detail. In other states the attempt is made to limit legislation to acts general in form and applicable to all cities of a given class. In Pennsylvania, it seems that the legislature, whenever the administration of any city becomes unsatisfactory to the state boss, may by special act remove its mayor, authorize the governor to name his successor, and directly despoil its public service. The city of New York has long been governed by the legislature of the state. Its people are merely permitted, from time to time, to determine whether its officials shall be common criminals, party tools, or public servants. These officials, when chosen, are subject, in the discharge of their duties, to constant intermeddling by the legislature. Some of them are responsible to the governor, and may be by him removed. To-day, a city of three and a half millions, whose people participate in the government of the nation, is not even permitted to determine for itself during what hours its saloons shall be closed. In Illinois, although the constitutional prohibition of special legislation is frequently evaded, the city of Chicago is greatly hampered in matters merely local, for want of permissive power to govern itself. All state inter-



ference in matters purely local, whatever its extent, is pernicious. Emancipation of the city from state intermeddling is everywhere a crying need.

Municipal government, if it is to act for the people of the city rather than as an executive agent of the state, must possess full legislative as well as large executive powers. The more independent of the state it becomes, the greater will be its legislative powers. A representative government must legislate as well as execute. Hence municipal self-government calls for a powerful council. This means public rather than secret, democratic rather than despotic city government. The vice of American municipal government lies in that it is mainly executive, and that it acts for the state. When it becomes representative of the people of the city, the council will voice and the mayor will execute their will. We shall then have responsible municipal government.

Much might be said in support of the proposal to make the mayor the administrative agent of the council. In many European cities he is chosen by the council, and thus acts. It is the American method to separate legislative and executive functions. Legislators and executives, elected by the people, directly and severally represent them. This division of powers among direct representatives of the people, justified by experience in nation and state, should be applied in the city. We understand and know how to work a government having distinct legislative and administrative departments. We know how to apportion responsibility between legislature and executive. The application of this method to the city will complete and make symmetrical our system of government.

Thus it appears that a municipal government directly representative of and responsible to the people of the city, and having distinct legislative and administrative departments, will strictly comply with American ideals, however it may depart from recent American practice. It is undeniable that it will not accord with such practice, especially that of recent years. The council, never what it should be, has been gradually abandoned, its powers being assumed by the state legislature. This usurper of arbitrary authority has made the mayor its local representative, vesting in him both execu-



tive and legislative powers. The distinction between legislation and administration in municipal government is all but lost. In lieu of municipal self-government we have despotic rule. In the absence of means through which its people might govern the city, the tendency has been to rely on the goodness and wisdom of the mayor. The resort has been to the dictator. Yet with this growth of despotism in our cities American municipal government has become more and more a "problem."

There are those who hold that good municipal government cannot be expected of democracy. Some even say that our experience is conclusive of its failure in this field. However, as thus far we have not tried really democratic methods in city administration, our failures cannot be laid at the door of democracy. We have made full trial of municipal government by state legislature and autocratic mayor acting together. To this irresponsible combination our failures are chargeable. The remedy for evils thus produced does not lie in a further departure from democratic methods. The failures of the constitution are due to the unwillingness of the fathers to rely on the people to choose the president and the members of the senate. The irresistible tendency of our history has been to remove all barriers between the people and their government, to make all its agencies directly responsive to their will. This movement will finally compel the application of democratic methods to city administration. Its aim to make the American commonwealth a representative democracy is certain of accomplishment.

Government, with us, has but one possible source of authority. Having repudiated the absurd fiction of the divine right of a man or group of men to rule over others, we can draw no line of exclusion. Authority to govern must come from without or it inheres in the whole people. We have nowhere save in the people any reserve of authority or virtue upon which to draw. To say that the people of the city cannot be trusted to govern themselves is to admit once for all the failure of democracy. The people of the city form a rapidly increasing proportion of our population. If not fit to govern themselves, they are not fit to participate

in the government of the state and nation. We are committed to democracy, and must work through it, however long the way, to good government.

No one who is at all acquainted with history and with the vast interests of our complex modern life expects government of whatever form to become an easy task. Those who really believe in democracy do not shrink from the application of democratic methods to city administration because of the difficulties involved. That their faith in the people of the city, even when largely of foreign birth, is not misplaced, a single illustration indicates. The council of the city of Chicago, though unwisely hampered by the state, possesses large powers. In 1895 it was absolutely owned by special interests. To-day the people of Chicago are represented in its council by over fifty of its seventy members. It is organized on non-partisan lines, the best members being in control of all important committees. No important measure to which there was popular objection has passed since the reform movement began. The Chicago council is to-day one of the best legislative bodies in the entire country. This result has been attained without waiting for organic reform.

The present hopeful movement for municipal reform takes democracy for granted. It for the first time seeks to apply democratic methods to city administration. It demands municipal self-government, with council and mayor. In the words of Mr. Delos F. Wilcox, in advocacy of the excellent municipal programme recommended by the National Municipal league, "the hope of humanity seems to lie in the perfection of democracy rather than in any retrogressive step, in exalting rather than in lessening popular responsibility."

## THE MERIT SYSTEM IN MUNICIPALITIES.

CLINTON ROGERS WOODRUFF.

[Clinton Rogers Woodruff, lawyer; was born Dec. 17, 1868, in Philadelphia; was graduated from the University of Pennsylvania in 1889 and from the law school of the same university in 1892; he has been actively associated with a large number of civic and political reform organizations and movements and served two terms in the Pennsylvania state legislature; is secretary of the National Municipal league and of the Pennsylvania Ballot Reform Association.]

We often hear the statement made in public or see it in print that the great problem of the day is the municipal problem. I wonder if we know just what this means? If we turn to the dictionary we are told that a "problem is a question for discussion and settlement; a matter of uncertainty requiring further light to determine the truth." So when we speak of the great problem of the day, we mean a great question which is before the people for discussion and settlement; a great matter of uncertainty requiring further light to determine its truth.

Why should the municipal problem be considered a great one? Why should it require discussion and consideration and further light? First because it affects or touches so many people. James Russell Lowell once said that any question which affected the welfare of thousands and hundreds of thousands, no matter how trivial in itself, acquired dignity and importance. Now when we come to talk about cities and their management, we at once begin to talk of figures so big as to be beyond the understanding of most of us who have never counted over 5,000 at any one sitting, if we have reached so far. Perhaps we can form some idea of how cities have grown in size and importance when we say that in 1790 when the first census or counting of the American people was taken, three people out of every hundred or thirty out of every thousand lived in cities. Now according to the last census thirty-three people out of every hundred or three hundred and thirty out of every thousand lived in cities. If we should count the people who live in the suburbs

of the cities, those doing business in the city and sleeping in the country, then we would find that nearly one-half of the people of this country should be considered as making up the city population.

Perhaps we can get at an understanding of what the cities are by stating that there were more people living in Greater New York than were living in the United States at the time we elected our first president; or to take another illustration:

There are as many people living in eight of the leading cities of this country as were living in the whole country in 1820, when the country was almost half a century old. It is only when we compare the present day figures with those of an earlier day and generation that we can appreciate what the urban or city population is.

We get an insight into the importance of the city by taking a simple illustration, such as was given by Mr. Horace E. Deming. He said, "When a trail has become a cart road, the cart road a highway, the highway a constantly travelled and closely thronged city street, the proper maintenance and care of the latter is an administrative problem of the greatest importance to thousands, and it may be to hundreds of thousands."

The care of a trail through the woods or forest was a matter of small importance and to a few people only. The care of that trail when it became a cart road was not a matter of much more importance; but when it became a highway, travelled by hundreds every week, then it was; and when it became a city street, used by thousands every day, it needed the constant care and attention of trained men. Then it became, as Mr. Deming says, "an administrative problem of the greatest importance." That is to say, the matter of caring for it and of keeping it in good repair, was a question of importance, because it affected the welfare of thousands and hundreds of thousands of people.

I might multiply illustrations by taking up such matters as that of supplying cities with water, light and police protection; but they all teach the same thing, that the great



numbers involved make the question important, as do the extent of territory covered and the services rendered.

When our federal government was founded, no city had attained to the dignity of 50,000 inhabitants. Philadelphia was the first city and it had only 42,520 population. Greater New York now employs a greater number than that, its payroll containing over 50,000 men and women. Think of what that means! New York now requires more people to carry on its government than resided in the largest city of the United States in 1790!

When we consider a city government which involves the services of 50,000 men and the welfare of 4,000,000 people, or to take some of the other cities, where the armies of office-holders range from 2,000 to 8,000 and where the people affected run from one-fourth of a million to two millions, as in the case of Chicago, we ask ourselves what principle should we follow in appointing them?

Tammany Hall in New York and the "machine" in Philadelphia and other cities insist upon regarding them as spoils of office. That is to say, that these offices, so great in number and so important in the services they are called upon to render, are to be used to pay political and personal debts. They are to be used in place of money or other valuable things to pay somebody for favors granted or to come.

Let us state the question a little differently. Policemen are to be appointed, not because they are good thief takers and can preserve order, but because they can or will control or have controlled a certain number of votes; firemen are to be appointed, not because they know how to put out fires, but because they are related to some one who has done a favor or is expected to do one to the machine; clerks are to be appointed because they belong to the party in power, not because they can write and figure well. The question of fitness to do the public work is not considered; the question of political usefulness to the machine is.

Imagine for an instant, if you can, the Pennsylvania railroad, with its great interests, although not comparing in extent with those of the leading cities of the country,

selecting its engineers, firemen, conductors, brakemen and clerks upon any other basis than that of fitness! What would we say if the superintendent of one of the divisions of that railroad, in looking for two assistants, found two in every way capable, but who happened to be republicans, and then refused to appoint them because their politics did not happen to be the same as his, and selected two inferior men because they were of his way of political thinking? Would the stockholders of the Pennsylvania railroad, even though fifty-five per cent might be of the same party as the superintendent, tolerate such conduct? To ask these questions as to a railroad or other corporation is to answer them, if they are not too absurd for attention. And yet just such a condition does prevail in our municipalities in respect to municipal offices, and just such practices create the municipal problem and bring our cities and their governments into disrepute. Men have been appointed to clean streets because they were democrats or republicans, and for similar reasons have been chosen clerks and janitors and surveyors and firemen and engineers. Their partisan affiliations and usefulness have been the first considerations for their appointments. Their usefulness to the public has been of secondary importance, if considered at all. This is the spoils system.

The next step after appointing men because of their politics and their political usefulness is to organize them into a compact body to carry on the system. It leads directly to what we call the "bread and butter brigade" in Philadelphia, an army of 10,000 men, or ten to an election division, who march shoulder to shoulder and fight battle after battle at the primary and general elections, to keep their positions and sustain a system which puts their selfish ends before the public good.

Society is built up on the voluntary sacrifices of a few that the many may live and prosper. When our land and its government are in danger men volunteer to serve in its army and navy, that their country may be protected. They are willing to sacrifice their lives that the country may live. The spoilsman proceeds on the reverse principle, and so he

is in truth an enemy of his country. He insists that a man shall be appointed to serve his ends, to help him in his ambitions. Men in public service are known as Croker's men, Quay's men, Lorimer's men, Cox's men. How seldom do we hear the good old-fashioned "public servant?"

The life of Colonel Waring is to be charged up to the spoils system. If he had not been replaced by a Tammany politician as superintendent of street cleaning in New York he would not have accepted the Cuban appointment, and so would not have contracted that dread disease which ended his life. Why was Colonel Waring replaced? Not because he did not know how to clean streets, because no man had ever done the work better. Not because he was less honest or efficient, but simply and solely because he was not a Tammany man.

The Greater New York republican convention was right when it declared, after nominating Seth Low for mayor, that "The great city is a great business corporation. There should not be such a thing as a republican or a democratic way of cleaning the streets, or collecting the taxes, or arresting the poolroom and dive keepers; and it makes no difference whether a man is a republican or a democrat, when his duties are to manage the police department, to conduct the finances, or to supervise the whole municipal administration."

In short, men should be selected for office because they merit the appointment; because they can do what the duties of their office require them to do, to the advantage of the public; and without any consideration of their politics or religion or their private relationships, except as these indicate their character and training. This, in short, is the merit system, wherein merit and not "pull" or special favor or political usefulness is the basis of appointment.

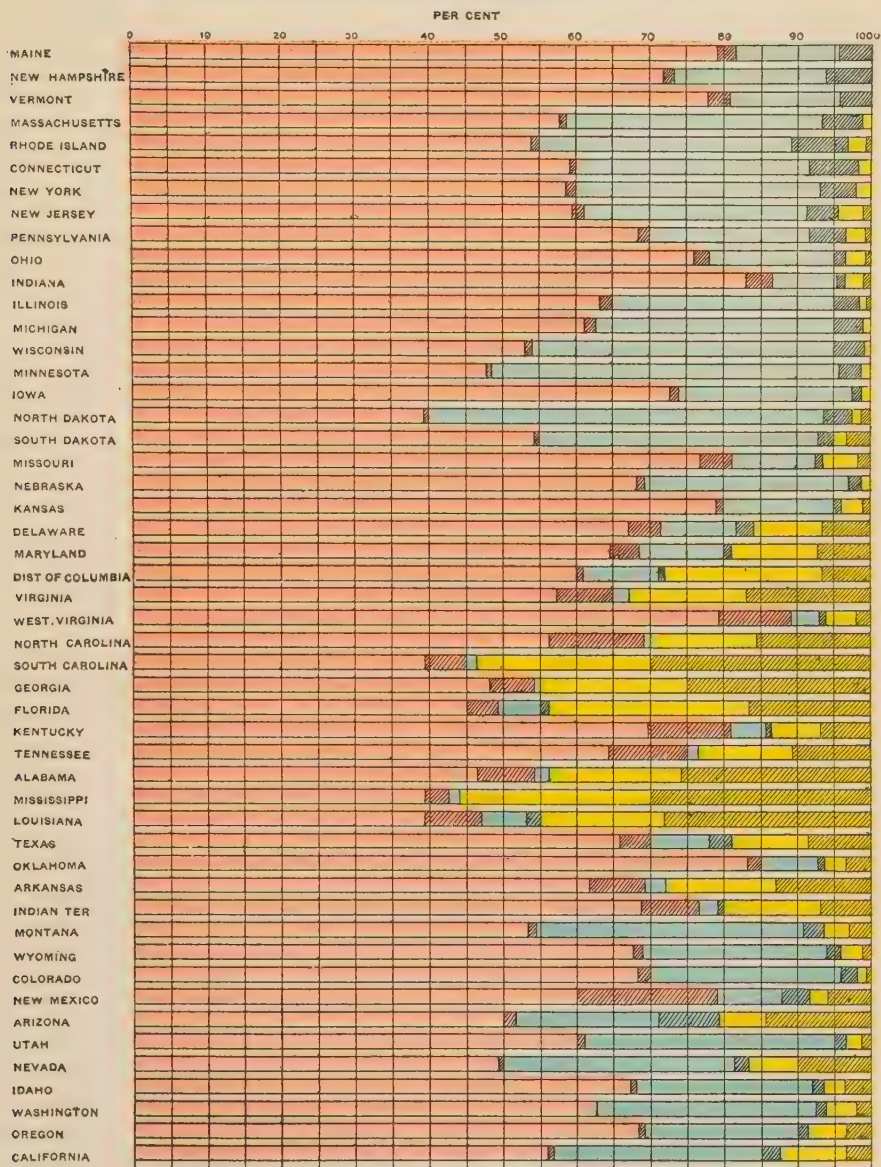
In these days the value of a professional training is everywhere recognized and in every department of activity, except that of government. It is based upon a recognition of the fact that the execution of a policy or its administration is a matter to be committed into the hands of trained men. To go back to the Pennsylvania railroad for an illustration, it is a matter of policy, to be determined by the directors,







# MALES OF VOTING AGE BY COLOR AND NATIVITY AND BY ILLITERACY:



NATIVE WHITE  
 FOREIGN WHITE  
 COLORED  
 ILLITERATE



whether a road shall be built between two cities; but engineers are given charge of the actual construction of the road, and they select the men who know how to build the road. The engineers do not select their assistants and helpers on the basis of their religious or political beliefs; they only ask that they be honest and capable. The other matters are irrelevant, and so it must come to be with the execution of municipal enterprises; and fortunately an increasing number of men and women are coming to look at the whole matter in this light. The reasons for this are not far to seek. The city is becoming a constantly increasing factor in our lives. Each year it becomes of more importance, because it touches us at more points. For years national affairs were given first place in the consideration of the average citizen. This has been shown time and again by the size of the vote at elections where national questions were involved, as compared with those where state or municipal ones were at issue. The interest, as shown by the vote, decreased from national to state and thence to city, so that at times the vote at those elections where only local issues were involved was shamefully small and insignificant. This condition of affairs is gradually yielding to one where a more rational view prevails, and we see citizens giving more and more attention to those affairs which they are realizing affect them most directly of all.

James C. Carter, a leader of the American bar, clearly set forth the basis for this change of feeling:

"If I should compare the importance of national politics, if I may so call them, the importance of a proper control of national affairs with that of municipal affairs, I should say that the former were less important, almost like dust in the balance, compared with the latter. In national affairs, whichever party is elected, the business of the country, the administration of its affairs goes on in about the same way. You would scarcely know the difference; but in municipal affairs, the moment degeneracy begins it is felt in every corner of your civil and political life. The moment unscrupulous men get possession of your municipal offices and turn them to their own purposes, your schools begin to suffer degradation, the pavement of your streets is affected, the



cleanness of your city is gone, your police come into alliance with crime and you are threatened with every sort of danger, and there is no form of social or political life in which you do not instantly feel the result. It is for this reason that I cannot help thinking that attention to municipal affairs is vastly more important in immediate results than any attention to national politics, although I would by no means disparage the latter."

In other words, in the opinion of this distinguished man, with an experience of fifty years and more in the practice of the law before the highest tribunals in the land, yes, in the world, for he was counsel for the United States before a recent international court of arbitration, these municipal questions are of greater importance than the national issues, which take up so much space in the newspapers and occupy so much of public attention. The reason is not far to seek. Municipal government has to do with such matters as light and water within the house, its protection from thieves and fires without. It has to do with the streets we walk upon and the cars we ride in; with our education and our recreation. Whether young or old, rich or poor, indoors or out, at work or play, all come in touch with the municipal government in some form or another, every day in the year. Except for the postman, how many of us have much, if any have business with the national government?

A former captain of police in Philadelphia came into my office, at my request, to tell his story. He had been dismissed from the force to make way for a new captain. Why? Was he less efficient as a policeman? No, but he had been a policeman so long, he had ceased to be politically useful and he had to make way for a new man who had more of a pull and knew more of politics. Think of school teachers being selected because of the politics of their brothers and fathers; and clerks appointed because they are republicans or democrats. We might just as well select our doctors or lawyers because of their politics. Or to put it another way: Suppose boys and girls were admitted to school and promoted, not as they showed their fitness and because they merited it, but because their fathers were republicans or democrats

and had a certain political pull! What would be said of such a system as that? And yet that is just what is done in the municipal service. Men and women are admitted to it and promoted in it for other reasons than their merit and fitness.

In these days we do not regard the public welfare with the reverence essential to its maintenance and highest development. In every direction we see a disregard of it on the plea than anything is good enough for the public. The municipal problem is primarily due to the failure to apply to the transaction of public business the same standards as are applied in private life. Public offices are spoils to be distributed among the victors. Public contracts are to be distributed as rewards to the favored. Public franchises are to be given to those who make the best private offers to the agents of the public for the time being.

A few years ago a West Virginia court declared that "The incumbent of an office has no property in it under our system of government. His right to exercise it is not based upon any contract or grant. It is conferred on him as a public trust, to be exercised for the benefit of the public. Such salary as may be attached to it is not given because of any duty on the part of the public to do so, but to enable the incumbent the better to perform the duties of his office by the more exclusive devotion of time thereto."

I might multiply instances of the absurdities of the spoils system, to show how it establishes a wrong principle in public life; how it denies the free and equal right of every man to serve his country, if he is fit to do so. Suppose when the civil war was being fought out the government had said only republicans will be accepted, only men who have served that party will be taken into the ranks, only men with a pull will have a chance. Every one would have denounced as absurd and treasonable such a policy; but wherein does it differ from the spoils system, under which admission to the public service is denied to all except those who belong to the party in power and those who serve its ends or will? Further, I might show the hardships following the spoils system, how men are deprived of their places after years of faithful service, simply to make way for those politically more useful;

but all to the same end—the spoils system is unwise and immoral.

The ills of such a system are appalling. They endanger the lives of our families, and they bring our government into disrepute and make men wonder whether democracy is a failure.

The duty is incumbent upon every American citizen who loves his country to root out that which has brought such serious reproach upon us as a nation. Let us bear in mind those sturdy words of James Russell Lowell:

I loved my country so as only they  
Who love a mother fit to die for may;  
I loved her old renown, her stainless fame,  
What better proof than that I loathed her shame?  
Never land long lease of empire won  
Whose sons sate silent when base deeds were done.

The merit system is the new morality. It places the "public good" above all else; above personal interests, above factional and partisan interests. Until the American people realize that "the newer morality demands that men should place the 'public good' above all other consideration," the merit system cannot be completely established. There must be no cessation of effort until the people realize and act upon their realization, that "the good of a part must, if necessary, be sacrificed to the good of the whole; that love of party must be subordinated to love of country; . . . that loyalty to neighbors must be forgotten if the public well-being is endangered or if it exacts the sacrifice."

One final word, and let that be from one who has rightly earned the reputation of being the foremost advocate of the merit system—Theodore Roosevelt,—“The merit system of making appointments is, in its essence, as democratic and American as the common school system itself, for it is simply one method of securing honest and efficient administration of the government, and, in the long run, the sole justification of any type of government lies in its proving itself both honest and efficient.”

# PROBLEMS OF IMMIGRATION.

BY FRANK P. SARGENT.

[Frank Pierce Sargent, United States commissioner-general of immigration; born Nov. 18, 1854, at East Orange, Vermont; after being educated in the village school he became a locomotive fireman and later chief of the Brotherhood of Locomotive Firemen; in 1898 he was appointed a member of the Industrial commission and resigned two years later, and declined the position of chief of Bureau of Engraving and Printing; in 1902 he was made commissioner-general of immigration.]

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No question of public policy is of greater importance or affects so closely the interests of the people of this country for the present and to come as that of immigration. It presents both a practical and a sentimental side. It cannot be dealt with as other public issues. It does not deal with the question of revenue. Its subjects are not inanimate like merchandise; they are human beings. They have aspirations, hopes, fears and frailties. The methods by which other laws are administered cannot, with regard to such a subject, be resorted to in the enforcement of the immigration laws.

These laws, with one exception, are not laws of exclusion, but laws of selection. They do not shut out the able-bodied, law-abiding and thrifty alien who seeks to make a home among us, and to help at once his individual condition and the welfare of his adopted country. To such it is the part, both of policy and good government, as well as of justice and fair play, to extend the hand of welcome. But it has long since been learned in the school of practical experience that the universal welcome which should be extended by a free people to those of oppressed nations, should be restrained by considerations of prudence and a regard for the safety and well-being of the country itself.

Hence it has become an established principle of this government to frown upon the efforts of foreign countries and of interested individuals and corporations to bring to the United States, to become burdens thereupon, the indigent, the morally depraved, the physically and mentally diseased,



the shiftless, and all those who are induced to leave their own country, not by their own independent volition and their own natural ambition to seek a larger and more promising field of individual enterprise, but by some selfish scheme, devised either to take undue advantage of some classes of our own people, or for other improper purpose. That such a policy is a wise one, as well as obligatory upon the government of this great country, is too obvious to require elaborate argument.

The total estimated alien immigration to the United States, from 1776 to 1820, was 250,000. The arrivals, tabulated by years, from 1820 to 1903, aggregate 21,092,614, distributed among the foreign countries as follows:

Netherlands .....	138,298
France .....	409,320
Switzerland .....	211,007
Scandinavia, which includes Denmark, Norway and Sweden.....	1,610,001
Italy .....	1,585,477
Germany .....	5,100,138
Austria-Hungary .....	1,518,582
United Kingdom (Great Britain and Ireland) . . .	7,061,710
Russia .....	1,122,591
Japan.....	64,313
China.....	288,398
Other countries such as Roumania, Greece, Turkey, Portugal and Poland .....	1,984,779

The total number of arrivals for the fiscal year ending June 30, 1903, was 857,046, divided as follows:

Netherlands .....	3,998
France .....	5,578
Switzerland .....	3,983
Scandinavia .....	77,647
Italy .....	230,622
Germany .....	40,086
Austria-Hungary .....	206,011
United Kingdom (Great Britain and Ireland) .....	68,947
Russia .....	136,093



of all aliens from about 5 per cent in former years to 25 per cent at the present time.

What I desire, however, to call attention to, is that in the enforcement of the immigration laws, since the subjects thereof are human beings, the treatment is two-sided. One-half of the work incumbent upon the government has been done when those whose presence would militate against the interests of the people of this country have been detected and returned to their homes. Under the direction of the bureau of immigration all aliens are carefully examined by immigrant inspectors and surgeons of the Marine Hospital service at the ports of entry for the purpose of rejecting those not admissible under the provisions of the immigration laws. During late years more than 1 per cent of those who applied for admission were rejected and returned to the countries whence they came. The total number thus debarred during one year was 8,769, for the following causes, viz.:

Paupers. . . . .	5,812
Afflicted with a loathsome or a dangerous contagious disease. . . . .	1,773
Contract laborers. . . . .	1,086
Convicts. . . . .	51
For all other causes. . . . .	47

In addition thereto 547 were deported who were found to be in the United States in violation of law.

There still remains the larger question, the question that more individually and vitally affects the interests of our people. What shall we do with the thousands that are admitted? Shall they be allowed to form alien colonies in our great cities, there to maintain the false ideals and to propagate the lawless views born thereof as the result of their experience—foreign not alone from their origin geographically, but foreign as well to this country in their ideals of human liberty and individual rights? To answer this question affirmatively is simply to transfer the evils which may be admitted to exist in foreign countries to our own shores. Immigration left thus is a menace to the peace, good order and stability of American institutions, a menace which will grow and increase with the

generations and finally burst in anarchy and disorder. It is thus necessary, as a measure of public security, to devise and put in force some means by which alien arrivals may be distributed throughout this country and thus afforded the opportunities by honest industry of securing homes for themselves and their children, the possession of which transforms radical thinkers into conservative workers and makes all that which threatens the welfare of the commonwealth a means to preserve its security and permanency.

The department of commerce and labor, through the bureau of immigration, should, in my judgment, furnish information to all desirable aliens as to the best localities for the profitable means of earning a livelihood, either as settlers, tradesmen or laborers. The states and territories which need immigration should file with the department such evidence of the advantages offered to aliens to settle in localities where conditions are favorable, so that the tide of immigration will be directed to the open and sparsely settled country. That the bureau of immigration should be the medium of distributing the aliens is to my mind as much of a duty as it is to decide to whom the right to enter shall be given.

There are confined in the penal, reformatory and charitable institutions of the eleven states from Maine to Maryland, including Delaware, 28,135 aliens. The Irish, Slavs, Germans, Italians and English make up 85 per cent of the total. There are 9,390 Irish; 5,372 Slavic; 4,426 Germans; 2,623 Italians, and 2,622 English. In Pennsylvania there are 5,601 aliens confined in these institutions, 90 per cent of whom are of the same five races in the following numbers: 1,772 Slavic; 1,218 Irish; 1,078 Germans; 673 Italians, and 423 English.

As I have already stated, the question has two sides. The other side is the humanitarian. It refers to the claims upon our consideration of alien arrivals as fellow beings. This side equally demands of a just and humane government the adoption of practical methods for such a distribution of these people as I have already indicated. On their own account, and in consideration of their ignorance and helplessness, they should be taken out of the great centers of popu-



lation, where restricted space compels them to live together in a very unhealthful and unsanitary condition, and where competition for the means of existence forces them to prey upon each other and upon American citizens engaged in the same pursuits by a system of underbidding for work, a condition which reduces the cost of labor and lowers the standard of living. Such colonization, furthermore, by its consequent disregard of sanitary laws, threatens the physical health of the communities affected.

I cannot do more than merely advert to the principal features of this great governmental policy regulating immigration, a policy whose administration, to some extent, has been confided to my hands. I feel with every day of added experience the gravity of the interests involved, and that it calls for all that is best and highest in ability and moral stamina to accomplish the best results. It would be impossible for any right-minded man—it certainly has been to me—to undertake such a task without soon learning how much it exacts. In every moment of doubt or uncertainty, however, I have endeavored to be governed by that fundamental principle of our government which recognizes the sacredness of right and individual opportunity, whether the person affected has fortunately been born under the shadow of the stars and stripes, or whether, when the opportunity comes to him to exercise his own volition in selecting a home for himself and his children, he seeks that protection. Exact justice to all, irrespective of present or previous condition, is the rule by which I have endeavored to enforce the immigration laws, bearing in mind always that in any conflict of interests between my own people and those of other countries my primary duty is so to act that the balance will incline in favor of the citizens of this country, in whose service I am employed.

## THE STRENGTH OF THE REPUBLIC.

BY WHITELAW REID.

[Whitelaw Reid, United States ambassador to Great Britain; born Oct. 27, 1837, at Xenia, Ohio; was graduated from Miami university, Oxford, Ohio, 1856; in 1859 he edited the Xenia, Ohio, News and after a varied newspaper career in 1868 became connected with the New York Tribune, since 1872 being its editor-in-chief and chief proprietor; after twice declining the post of minister to Germany he became minister to France in 1889; in 1892 he was republican nominee for vice president; in 1897 he was special ambassador to Queen Victoria's jubilee and a year later was a member of the Peace commission at Paris; in 1902 he was special ambassador for the coronation of King Edward; ambassador to Great Britain, 1905; author of *After the War*, *Ohio in the War*, *Schools of Journalism*, *Newspaper Tendencies*, *Town Hall Suggestions*, *Our New Duties*, *Our New Interests and Problems of Expansion*.]

We all believe in our form of government. In fact, we are intolerant believers in it. Every child learns to think that it is the best in the world, not only for us, but for all men. Every demagogue learns to bellow forth from the cart tail his unlimited, unquestioning certainty of that superiority and universal applicability.

I do not dispute the belief—but only define the facts about it. If our form of government is the best, it cannot be so because it is the cheapest. On the contrary, it is one of the most expensive in the world; with more paid lawmakers than any other, higher salaries generally for subordinates (though with very unworthy scrimping in some of the most important places, like the judiciary), higher pay on government contracts, more lavish appropriations for internal improvements, and the costliest army in proportion to number and work. Our form of government cannot be the best because it is the most efficient. On the contrary, it is one of the slowest in the world; the most complicated, cumbrous, and limited. Our foreign representatives have been again and again humiliated by appeals from citizens abroad whom we could not or did not protect against impressment, with our passports in their hands, into the military service of other countries. Every few years we are all humiliated before the world because of riotous outrages on Italians, or on Chinese, or on other foreigners, which some state has not suppressed

or atoned for, and the nation has no adequate control of. This very year there could be found for five months no power in the state of Pennsylvania or in the United States to stop disorder and riot in the coal mines, and finally that imperative work had to be done by voluntary effort outside the constitutional processes or authority of the high office that successfully intervened.

Even within the spheres in which it will work, our form of government is not the easiest to work. On the contrary, it requires, to keep it running successfully, more public spirit, more study about candidates, more time for multitudinous elections, local, state and national; more watchfulness of public officials and a higher average of intelligence than any other in the world; and no one has ever shown that without this alert and devoted public spirit, this unremitting attention and this high average of intelligence, it could have achieved its best successes or could now maintain them. Some of our states repudiated their public obligations, and it took vehement and long continued effort to get the disgraceful action reversed. The whole country was convulsed for years in the struggle to prevent payment of the national debt in a depreciated medium at half price. The greatest city on the continent fell under the almost absolute domination of a vulgar thief. We had to have years of strenuous exertion by the city's best men of all parties, thousands of speeches and ten thousands of columns of newspaper exposure—in fact, the whole community had to be laboriously worked up to a state of excitement bordering on hysteria or epilepsy to get that thief put in jail and his gang turned out of office. Even then, how long did the gang stay out?

The men who formed this complicated and delicately balanced government had no notion of the conceit prevailing nowadays about its universal applicability, or even about universal participation here in its conduct. In their day the idea that it could be applied to the so-called inferior races was foreign not only to their convictions, but even to their speculations. They simply did not think of the notion, or fancy it worth talking about. They never dreamed of applying our form of government to the native races of America; and as

to the blacks, they didn't imagine it needful to mention them as an exception—so unthinkable was it to the majority that the blacks should be included—when they solemnly declared that all men were born free and equal, and then went on calmly buying and selling slaves and enacting fugitive slave laws just as usual. Not until 1865 was it even established throughout the United States that every man, black or white, has the right to sell his own labor; and in 1902, in every state, there were still found a great many persons, including a pitiful number of exceptionally ignorant or emotional clergymen, and some people called statesmen, who considered such a right on the part of some white men so doubtful that they were not ashamed to urge, for the sake of peace and coal, that it should be submitted to arbitration.

Well, in spite of these defects and limitations, this government of ours has, after all, accomplished in its short career a very respectable work in the world. The magnitude and myriad-sided development of this work have been recited by many an eloquent voice and pen, at home and abroad, though nowhere more persuasively and effectively than by an old citizen of Pittsburg, in a book called "Triumphant Democracy." That clear eye saw and proclaimed the triumph years ago. Within only a year or two the whole world has come to recognize the young republic as the very Samson among the nations which Mr. Carnegie then depicted. But, if the things we have been saying are so, if they have any foundation whatever, if our government does in any measure have these defects, then the old question of the Philistines comes up with insistent force: "Wherein lies its great strength?"

To the answer to that question and the reasons for the answer I think it timely to ask consideration. If our form of government is unusually expensive and dilatory and liable to go wrong without eternal vigilance and perpetual agitation; if it is often found so much worse than other forms in executive efficiency, in economy, in promptness of action, and in continuity of policy, what makes it better?

The answer has become a truism. Its strength lies in the equality of man it develops. The real merit is not in the



machinery, but in the skilled intelligence absolutely required to frame and to work it; in the combination of respect for authority on the one hand, with training in individual initiative on the other, which this work brings out and which the government has thus far scrupulously and religiously guarded.

We brought the respect for authority from the birthplace of the common law; and in proportion as harshness from its officers was resented in the old home, in like proportion the law itself was instinctively elevated into a veritable pillar of cloud by day and of fire by night in the wilderness of the new world. We found the individual initiative in the necessities of an untamed continent; were driven to it, shut up to it at every turn—in the imperative beginning of orderly self-government at a thousand isolated spots; in the long-protracted struggle with wild lands, wild beasts, and wild men—till it became the inheritance of the race; till under its stimulus men found their solitary way through trackless woods to make lonely clearings or start frontier settlements across the Alleghenies, through trackless prairies to possess the Mississippi valley, through alkali deserts to wrest their gold from the mountains, and at last through the Sierras to scatter up and down the enchanted shore of the Pacific. To such a continental conquest of nature and of men have those two traits of the fathers brought us: their respect for authority and their widest freedom of individual initiative. These, with the original vigor of the stock, have made Americans what they are; and by consequence have made this blessed country of ours the joy and pride and hope of our lives. To harm either is criminal—whether to break down respect for authority by unlawful combinations, tricky evasions, and open defiance of order, or to cramp the widest freedom of the individual in any lawful enterprise or labor anywhere. Whoever or whatever now dares to interfere with the permanent union of these two traits and their continued development in the American life, is an enemy to the republic—whether known as political boss, or as trust, or as trades union.

But let me not be misunderstood. Nobody can doubt the need in politics of appliances for finding and enforcing the will of the party majority. Nobody can question the

economies and public benefits in business from great consolidations of capital. Nobody can deny the right of labor to combine for higher wages and shorter hours and healthful conditions of work. I mean no arraignment of organization itself, either in politics or finance or labor—only of that tyrannical organization, that unrepblican organization, that abandonment of the underlying essentials of democratic success and that reversion to the principles of an absolute monarchy or a military despotism, which refuses to recognize that it has reached the limits of its own right when it invades the rights of others, and so saps the very springs that have lifted us to this floodtide of national prosperity. Indeed, instead of opposing, I appeal for organization, but only for organization of the kind which a distinguished ex-president of the United States once commended—the organization which seeks co-operation instead of the one that suppresses individual judgment and demands exclusive control; the organization which aims at the helpful union of men of like minds and interests, or the needful strength to meet competition, not at monopoly; which minds its own business, and is willing that whoever is not with it should have equal liberty, in this land of liberty, to do the same.

Such an organization does not exclude young lawyers from references unless they have made their peace with the men who nominated the judges. It does not keep all rising young men out of the public service unless pledged to support the bills the boss wants, and to protect or punish the corporations as he may direct. It does not evade state laws, circumvent national boards, and conceal its operations alike from the state that charters and the stockholders that support it, in efforts to monopolize business or to crush competition. It does not declare that nobody shall labor or sell the products of lawful labor save on its terms or under its orders. It is co-operative and beneficent, not restrictive and monopolistic; it protects its own rights without harm to the rights of others, and instead of narrowing the doors to young men and checking aspiration, it maintains the old glory of the land, the freest opportunity for all, with hope of the richest rewards for the worthiest.

Such organization knows the spirit of this people and has learned the secret of their triumphs. It stimulates instead of checking the alertness, the ingenuity, the self-reliance, the independence, the courageous, indomitable ambition which from the very beginning in this land have created and compelled that individual initiative of which we have been speaking. In politics it does not crush, on the contrary, it welcomes the democratic spirit in party councils and the freest debate as the surest road to political harmony. In business it does not dread, on the contrary, it expects and prepares for competition; it does not resist and bewail, on the contrary, it rejoices in the power of growing capital, which is the offspring of intelligence and thrift, and the begetter of public prosperity. In the industrial world it does not degrade labor into a dull, mechanical level of limited and uniform production; on the contrary, it inspires the individual workman with the certainty of rewards in proportion to his skill and his right living. It preserves for all, in public life or in private, in the ranks of capital or of labor, the theory of our government from the beginning—not against classes, as the demagogues tell us, but against fixed classes; it maintains, as the priceless distinction of our social state, the fluidity and easy transfusion of classes, giving constantly to the intelligent and industrious in any one the hope of rising by their intelligence and industry to any other.

Years ago a laboring man on strike said to me: "There is no use any longer in talking to us about saving and rising out of our class; about ever becoming an employer and one's own master. That stage of the world has passed. I and my fellows must be day laborers to the end. We must fix our eyes solely on one thing, the day's wages, and make common cause, so that the slowest or poorest workman may be put to no disadvantage by the skill or industry of his fellows, in getting bread for his children." It is the most dangerous delusion of the times, undermining the foundations alike of industrial progress and of public honesty; and its only logical outcome is either a permanent and unrepugnant fixity of classes or the hopeless dead sea of socialism.



The same declaration about the impossibility of rising under existing conditions was heard in New York when a young boatman named Cornelius Vanderbilt was beginning to run a little ferry to Staten island. It was heard in Washington when a young portrait painter named Morse was developing the telegraph. It was heard in my own calling when Bennett and Greeley and Raymond started, and heard again when they died. It was heard in Pittsburg when Andrew Carnegie was a messenger boy, and it was heard again when he retired to begin giving away his three or four hundred millions. But after Vanderbilt came Scott and Cassatt, Huntington, Morgan, Hill and Harriman; after Morse came Cyrus Field and Edison and Westinghouse and Bell and Marconi. The development of the newspapers did not stop with Bennett and Greeley and Raymond; the development of the iron industry has not been closed by the organization of the United States Steel Corporation, and Schwab is not the last day laborer to rise from the iron mills. The chances for the young man are and must be kept as good to-day as they ever were; in fact, they are and must be made as much better as the scale on which this western world is moving grows yearly and monthly more colossal. But now, as in all past times, with political managers or in spite of them, with trusts or in spite of them, with trades unions or in spite of them, the chances are to him that can see and seize them; the tools are to him that can use them. "A man's a man for a' that."

There was a clarifying expression in the report of proceedings at the opening of the Carnegie institute in Pittsburg. Its founder said he heard a great deal about sympathy for the "submerged tenth"; but for his part his sympathy went out rather to the swimming tenth! An audience already used to his large methods was then startled at this further intimation that, besides what he had done and was doing here, he had in view still other uses in this vicinity for surplus wealth. It has since been said that these additional plans look to technical or perhaps to technological schools. If the precise use is as yet undecided, it may be permissible to



express the hope that this new provision will be for the swimming tenth.

The suggestion would not be ventured, however, were it not in line with the founder's expressed sympathy. This business of thrusting advice upon any great public benefactor is overdone, and it comes usually unasked from those whose advice is least worth having. A certain weariness grows on most people at seeing the frequent lectures from those who have nothing to give about how those who have something to give should give it. The longer one lives a self-respecting, industrious, frugal life, the less attention one is likely to pay to the thriftless and prodigal—especially when they set themselves up to tell the other class what they ought to do with their money. A man who is solemnly reminded from such a quarter that "wealth is a trust" may well be tempted to ask, "Why didn't you think of your own trusteeship then, instead of burying your talent in the ground?" and may even resent these instructions from the self-indulgent and extravagant as to how the self-denying and economical should bestow their accumulations.

Nevertheless the self-denying and economical do generally recognize that great prosperity opens great opportunities and devolves great duties. It is characteristic of the race that among us these opportunities and duties should be instinctively and almost universally sought in the service of God and the service of humanity, and the service of the two is really the same. But it is not always the service of God or of humanity to give help to people who want it. Often that does more harm than good; always it tends to breed a race of weaklings. Hercules refusing to help the carter who did not put his own shoulder to the wheel, and Carnegie, turning from the submerged tenth, to devise means for encouraging the swimming tenth, these are the ancient and modern expressions of the same eternal truths that, in this life at least, by works ye are saved, and he that will not work neither shall he eat.

That, in fact, is the line along which the future of the republic may be safeguarded. It is to endure, if at all, because the latest generations hold fast to the faith and practice of

the fathers, respect for authority and the widest liberty for individual activities. Mr. Dalzell once quoted, very aptly the illuminating definition of civilization given by a philosophic Frenchman. "It is," said M. Guizot, "the progress of society and the progress of the individual." But society cannot make progress without that respect for authority which is its cornerstone; and the individual cannot make progress without that freedom of initiative which is the essence of liberty itself.

If society makes progress and the individual does not, you have the condition, not of the republic which, we fondly trust, is to endure forever, but of the despotism which we have hoped was passing away. Let us not lose our heads in the midst of our bewildering prosperity, and risk shipwreck by getting out of sight of the old landmarks. We are the oldest republic in the world (save those so small as to be ineligible), but our years do not yet cover the span the Psalmist assigned to two human lives, while those of the monarchies and despotisms count by thousands. Other republics, long since passed away, have lasted as long as we, and borne for their time as great a sway in the world. Be not deceived. Strong as this republic is, it is not strong enough,—let us hope it will never be unjust enough,—to let either labor shut any of its children out of learning a trade or capital shut any of them out of going into trade. You cannot preserve the triumphant democracy and insure the American future unless you preserve the American citizen in his habit as he was, revering the law, respecting authority, and beyond that, still limited in his free activities by no master below God.

## PROBLEMS BEFORE THE NATION.

BY THEODORE ROOSEVELT.

[Theodore Roosevelt, twenty-sixth president of the United States; born Oct. 27, 1858, in New York; was graduated from Harvard in 1880; was a member of the New York state legislature in 1882 and in 1884 was delegate to the National Republican convention; after two years of ranch life in North Dakota he became candidate for mayor of New York in 1886; in 1889 he was National Civil Service commissioner; in 1895 president New York police board; in 1897 assistant secretary of the navy, which post he resigned to organize the Rough Riders, and became lieutenant-colonel and then colonel of the regiment which distinguished itself in Cuba, promoted for his gallant conduct in the engagement at Las Guasimas; in 1899 he became governor of New York, a year later he was elected to the vice presidency of the United States, and in 1901 succeeded to the presidency upon the death of William McKinley; elected president 1904; he has been a distinguished advocate of civic reforms both national and municipal, and a well known author, including studies of his western life where he distinguished himself as a skilled sportsman; author of *Winning of the West*, *History of the Naval War of 1812*, *Hunting Trips of a Ranchman*, *Life of Thomas Hart Benton*, *Life of Gouverneur Morris*, *Ranch Life and Hunting Trail*, *History of New York*, *American Ideals and Other Essays*, *The Wilderness Hunter*, *The Rough Riders*, *Life of Oliver Cromwell*, *The Strenuous Life*, and, as co-author, *The Deer Family*.]

We are passing through a period of great commercial prosperity, and such a period is as sure as adversity itself to bring mutterings of discontent. At a time when most men prosper somewhat some men always prosper greatly; and it is as true now as when the tower of Siloam fell upon all alike, that good fortune does not come solely to the just, nor bad fortune solely to the unjust. When the weather is good for crops it is good for weeds. Moreover, not only do the wicked flourish when the times are such that most men flourish, but, what is worse, the spirit of envy and jealousy springs up in the breasts of those who, though they may be doing fairly well themselves, see others no more deserving, who do better.

Wise laws and fearless and upright administration of the laws can give the opportunity for such prosperity as we see about us. But that is all that they can do. When the conditions have been created which make prosperity possible, then each individual man must achieve it for himself, by his own energy and thrift and business intelligence. If when people wax fat they kick, as they have kicked since the days

of Jeshurun, they will speedily destroy their own prosperity. If they go into wild speculation and lose their heads, they have lost that which no laws can supply. If in a spirit of sullen envy they insist upon pulling down those who have profited most in the years of fatness, they will bury themselves in the crash of the common disaster. It is difficult to make our material condition better by the best laws, but it is easy enough to ruin it by bad laws.

The upshot of all this is that it is peculiarly incumbent upon us in a time of such material well-being, both collectively as a nation and individually as citizens, to show, each on his own account, that we possess the qualities of prudence, self-knowledge, and self-restraint. In our government we need above all things stability, fixity of economic policy, while remembering that this fixity must not be fossilization, that there must not be inability to shift our laws so as to meet our shifting national needs. There are real and great evils in our social and economic life, and these evils stand out in all their ugly baldness in time of prosperity; for the wicked who prosper are never a pleasant sight. There is every need of striving in all possible ways, individually and collectively, by combinations among ourselves and through the recognized governmental agencies, to cut out those evils. All I ask is to be sure that we do not use the knife with an ignorant zeal which would make it more dangerous to the patient than to the disease.

One of the features of the tremendous industrial development of the last generation has been the very great increase in private, and especially in corporate, fortunes. We may like this or not, just as we choose, but it is a fact nevertheless; and as far as we can see it is an inevitable result of the working of the various causes, prominent among them steam and electricity. Urban population has grown in this country, as in all civilized countries, much faster than the population as a whole during the last century. There is evil in these conditions, but you can't destroy it unless you destroy the civilization they have brought about. Where men are gathered together in great masses, it inevitably results that they must work far more largely through combinations than where they live scattered and remote from one



another. Many of us prefer the old conditions of life, under which the average man lived more to himself and by himself, where the average community was more self-dependent, and where even though the standard of comfort was lower on the average, yet there was less of the glaring inequality in worldly conditions which we now see about us in our great cities. It is not true that the poor have grown poorer; but some of the rich have grown so very much richer that, where multitudes of men are herded together in a limited space, the contrast strikes the onlooker as more violent than formerly. On the whole, our people earn more and live better than ever before, and the progress of which we are so proud could not have taken place had it not been for the upbuilding of industrial centers.

But together with the good there has come a measure of evil. Life is not so simple as it was; and surely, both for the individual and the community, the simple life is normally the healthy life. There is not in the great cities the feeling of brotherhood which there is still in country localities, and the lines of social cleavage are far more deeply marked.

For some of the evils which have attended upon the good of the changed conditions we can at present see no complete remedy. For others the remedy must come by the action of men themselves in their private capacity, whether merely as individuals or by combination. For yet others some remedy can be found in legislative and executive action—national, state, or municipal. Much of the complaint against combinations is entirely unwarranted. Under present-day conditions it is as necessary to have corporations in the business world as it is to have organizations, unions, among wage workers. We have a right to ask in each case only this: that good and not harm shall follow. Exactly as labor organizations, when managed intelligently and in a spirit of justice and fair play, are of very great service not only to the wage workers but to the whole community, as has been shown again and again in the history of many such organizations; so wealth, not merely individual, but corporate, when used aright, is not merely beneficial to the community as a whole, but is absolutely essential to the upbuilding of such a series

of communities. This is so obvious that it ought to be too trite to mention, and yet it is necessary to mention it when we see some of the attacks made upon wealth, as such.

Of course a great fortune, if used wrongly, is a menace to the community. A man of great wealth who does not use that wealth decently is in a peculiar sense a menace to the community, and so is the man who does not use his intellect aright. Each talent—the talent for making money, the talent for showing intellect at the bar, or in any other way, if unaccompanied by character, makes the possessor a menace to the community. But such a fact no more warrants us in attacking wealth than it does in attacking intellect. Every man of power by the very fact of that power is capable of doing damage to his neighbors; but we cannot afford to discourage the development of such men merely because it is possible they may use their power for wrong ends. If we did so we should leave our history a blank, for we should have no great statesmen, soldiers, merchants, no great men of arts, of letters, of science. Doubtless on the average the most useful citizen to the community as a whole is the man to whom has been granted what the Psalmist asked for—neither poverty nor riches. But the great captain of industry, the man of wealth, who alone or in combination with his fellows, drives through our great business enterprises, is a factor without whom the civilization that we see round about us here could not have been built up. Good, not harm, normally comes from the upbuilding of such wealth. Probably the greatest harm done by vast wealth is the harm that we of moderate means do ourselves when we let the vices of envy and hatred enter deep into our own natures.

But there is other harm; and it is evident that we should try to do away with that. The great corporations which we have grown to speak of rather loosely as trusts are the creatures of the state, and the state not only has the right to control them, but it is in duty bound to control them wherever the need of such control is shown. There is clearly need of supervision—need to possess the power of regulation of these great corporations through the representatives of the public, wherever, as in our own country at the present time, business

corporations become so very powerful alike for beneficent work and for work that is not always beneficent. It is idle to say that there is no need for such supervision. There is, and a sufficient warrant for it is to be found in any one of the admitted evils appertaining to them.

We meet a peculiar difficulty under our system of government, because of the division of governmental power between the nation and the states. When the industrial conditions were simple, very little control was needed, and the difficulties of exercising such control under our constitution were not evident. Now the conditions are complicated and we find it hard to frame national legislation which shall be adequate; while as a matter of practical experience it has been shown that the states either cannot or will not exercise a sufficient control to meet the needs of the case. Some of our states have excellent laws—laws which it would be well indeed to have enacted by the national legislature. But the widespread differences in these laws, even between adjacent states, and the uncertainty of the power of enforcement, result practically in altogether insufficient control. I believe that the nation must assume this power of control by legislation; if necessary, by constitutional amendment. The immediate necessity in dealing with trusts is to place them under the real, not the nominal, control of some sovereign to which, as its creatures, the trusts shall owe allegiance, and in whose courts the sovereign's orders may be enforced.

This is not the case with the ordinary so-called "trust" to-day; for the trust nowadays is a large state corporation, which generally does business in other states, often with a tendency toward monopoly. Such a trust is an artificial creature not wholly responsible to or controllable by any legislation, either by state or nation, and not subject to the jurisdiction of any one court. Some governmental sovereign must be given full power over these artificial, and very powerful, corporate beings. In my judgment this sovereign must be the national government. When it has been given full power, then this full power can be used to control any evil influence, exactly as the government is now using the power conferred upon it by the Sherman anti-trust law.



Even when the power has been granted, it would be most unwise to exercise it too much, to begin by too stringent legislation. The mechanism of modern business is as delicate and complicated as it is vast, and nothing would be more productive of evil to all of us, and especially to those least well off in this world's goods, than ignorant meddling with this mechanism—above all, meddling in a spirit of class legislation or hatred or rancor. It is eminently necessary that the power should be had, but it is just as necessary that it should be exercised with wisdom and self-restraint. The first exercise of that power should be the securing of publicity among all great corporations doing an interstate business. The publicity, though non-inquisitorial, should be real and thorough as to all important facts with which the public has concern. Daylight is a powerful discourager of evil. Such publicity would by itself tend to cure the evils of which there is just complaint; it would show us if evils existed, and where the evils are imaginary, and it would show us what next ought to be done.

Above all, let us remember that our success in accomplishing anything depends very much upon our not trying to accomplish everything. Distrust whoever pretends to offer you a patent cure-all for every ill of the body politic, just as you would a man who offers a medicine which would cure every evil of your individual body. A medicine that is recommended to cure both asthma and a broken leg is not good for either. Mankind has moved slowly upward through the ages, sometimes a little faster, sometimes a little slower, but rarely, indeed, by leaps and bounds. At times a great crisis comes in which a great people, perchance led by a great man, can at white heat strike some mighty blow for the right—make a long stride in advance along the path of justice and of orderly liberty. But normally we must be content if each of us can do something—not all that we wish, but something—for the advancement of those principles of righteousness which underlie all real national greatness, all true civilization and freedom. I see no promise of any immediate and complete solution of all the problems we group together when we speak of the trust question. But we can make a beginning in solving



these problems, and a good beginning, if only we approach the subject with a sufficiency of resolution, of honesty, and of that hard common sense which is one of the most valuable, and not always one of the most common, assets in any nation's greatness. The existing laws will be fully enforced as they stand on the statute books without regard to persons, and I think good has already come from their enforcement. I think furthermore that additional legislation should be had and can be had, which will enable us to accomplish much more along the same lines. No man can promise a perfect solution, at least in the immediate future. But something has already been done, and much more can be done if our people temperately and determinedly will that it shall be done.

While we are not to be excused if we fail to do whatever is possible through the agency of government, we must keep ever in mind that no action of the government, no action by combination among ourselves, can take the place of the individual qualities to which, in the long run, every man must owe the success he can make of life. There never has been devised, and there never will be devised, any law which will enable a man to succeed save by the exercise of those qualities which have always been the prerequisites of success—the qualities of hard work, of keen intelligence, of unflinching will. Such action can supplement those qualities, but it cannot take their place. No action by the state can do more than supplement the initiative of the individual; and ordinarily the action of the state can do no more than to secure to each individual the chance to show under as favorable conditions as possible the stuff that there is in him.







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